

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1670

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 18 (legislative day, SEPTEMBER 5), 1995

Received; read twice and referred to the Committee on Governmental Affairs

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## AN ACT

To revise and streamline the acquisition laws of the Federal Government, to reorganize the mechanisms for resolving Federal procurement disputes, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Federal Acquisition  
3 Reform Act of 1995”.

4 **SEC. 2. TABLE OF CONTENTS.**

5       The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.

TITLE I—COMPETITION

- Sec. 101. Improvement of competition requirements.
- Sec. 102. Definitions relating to competition requirements.
- Sec. 103. Contract solicitation amendments.
- Sec. 104. Preaward debriefings.
- Sec. 105. Contract types.
- Sec. 106. Contractor performance.
- Sec. 107. Two-phase selection procedures.

TITLE II—COMMERCIAL ITEMS

- Sec. 201. Commercial item exception to requirement for cost or pricing data and information limitations.
- Sec. 202. Application of simplified procedures to commercial items.
- Sec. 203. Amendment to definition of commercial items.
- Sec. 204. Inapplicability of cost accounting standards to contracts and sub-contracts for commercial items.

TITLE III—ADDITIONAL REFORM PROVISIONS

- Sec. 301. Government reliance on the private sector.
- Sec. 302. Elimination of certain certification requirements.
- Sec. 303. Amendment to commencement and expiration of authority to conduct certain tests of procurement procedures.
- Sec. 304. International competitiveness.
- Sec. 305. Procurement integrity.
- Sec. 306. Further acquisition streamlining provisions.
- Sec. 307. Justification of major defense acquisition programs not meeting goals.
- Sec. 308. Enhanced performance incentives for acquisition workforce.
- Sec. 309. Results oriented acquisition program cycle.
- Sec. 310. Rapid contracting goal.
- Sec. 311. Encouragement of multiyear contracting.
- Sec. 312. Contractor share of gains and losses from cost, schedule, and performance experience.
- Sec. 313. Phase funding of defense acquisition programs.
- Sec. 314. Improved Department of Defense contract payment procedures.
- Sec. 315. Consideration of past performance in assignment to acquisition positions.
- Sec. 316. Additional Department of Defense pilot programs.
- Sec. 317. Value engineering for Federal agencies.
- Sec. 318. Acquisition workforce.

- Sec. 319. Demonstration project relating to certain personnel management policies and procedures.
- Sec. 320. Cooperative purchasing.

#### TITLE IV—STREAMLINING OF DISPUTE RESOLUTION

##### Subtitle A—General Provisions

- Sec. 401. Definitions.

##### Subtitle B—Establishment of Civilian and Defense Boards of Contract Appeals

- Sec. 411. Establishment.
- Sec. 412. Membership.
- Sec. 413. Chairman.
- Sec. 414. Rulemaking authority.
- Sec. 415. Authorization of appropriations.

##### Subtitle C—Functions of Defense and Civilian Boards of Contract Appeals

- Sec. 421. Alternative dispute resolution services.
- Sec. 422. Alternative dispute resolution of disputes and protests submitted to boards.
- Sec. 423. Contract disputes.
- Sec. 424. Protests.
- Sec. 425. Applicability to certain contracts.

##### Subtitle D—Repeal of Other Statutes Authorizing Administrative Protests

- Sec. 431. Repeals.

##### Subtitle E—Transfers and Transitional, Savings, and Conforming Provisions

- Sec. 441. Transfer and allocation of appropriations and personnel.
- Sec. 442. Terminations and savings provisions.
- Sec. 443. Contract disputes authority of boards.
- Sec. 444. References to agency boards of contract appeals.
- Sec. 445. Conforming amendments.

##### Subtitle F—Effective Date; Regulations and Appointment of Chairmen

- Sec. 451. Effective date.
- Sec. 452. Regulations.
- Sec. 453. Appointment of chairmen of defense board and civilian board.

#### TITLE V—EFFECTIVE DATES AND IMPLEMENTATION

- Sec. 501. Effective date and applicability.
- Sec. 502. Implementing regulations.

1                   **TITLE I—COMPETITION**

2   **SEC. 101. IMPROVEMENT OF COMPETITION REQUIRE-**  
3                   **MENTS.**

4           (a) ARMED SERVICES ACQUISITIONS.—(1) Section  
5 2304 of title 10, United States Code, is amended to read  
6 as follows:

7   **“§ 2304. Contracts: competition requirements**

8           “(a) COMPETITION.—(1) Except as provided in sub-  
9 sections (b), (c), and (e) and except in the case of procure-  
10 ment procedures otherwise expressly authorized by stat-  
11 ute, the head of an agency in conducting a procurement  
12 for property or services—

13                   “(A) shall obtain full and open competition—

14                           “(i) that provides open access, and

15                           “(ii) that is consistent with the need to ef-  
16 ficiently fulfill the Government’s requirements,

17           through the use of competitive procedures in accord-  
18 ance with this chapter and the Federal Acquisition  
19 Regulation; and

20                   “(B) shall use the competitive procedure or  
21 combination of competitive procedures that is best  
22 suited under the circumstances of the procurement.

23           “(2) In determining the competitive procedure appro-  
24 priate under the circumstances, the head of an agency—

25                   “(A) shall solicit sealed bids if—

1           “(i) time permits the solicitation, submis-  
2           sion, and evaluation of sealed bids;

3           “(ii) the award will be made on the basis  
4           of price and other price-related factors;

5           “(iii) it is not necessary to conduct discus-  
6           sions with the responding sources about their  
7           bids; and

8           “(iv) there is a reasonable expectation of  
9           receiving more than one sealed bid; and

10          “(B) shall request competitive proposals if  
11          sealed bids are not appropriate under clause (A).

12          “(b) EXCLUSION OF PARTICULAR SOURCE.—The  
13          head of an agency may provide for the procurement of  
14          property or services covered by this title using competitive  
15          procedures but excluding a particular source in order to  
16          establish or maintain an alternative source or sources of  
17          supply for that property or service. The Federal Acquisi-  
18          tion Regulation shall set forth the circumstances under  
19          which a particular source may be excluded pursuant to  
20          this subsection.

21          “(c) EXCLUSION OF CONCERNS OTHER THAN SMALL  
22          BUSINESS CONCERNS AND CERTAIN OTHER ENTITIES.—  
23          The head of an agency may provide for the procurement  
24          of property or services covered by this section using com-  
25          petitive procedures, but excluding concerns other than

1 small business concerns in furtherance of sections 9 and  
2 15 of the Small Business Act (15 U.S.C. 638, 644) and  
3 concerns other than small business concerns, historically  
4 Black colleges and universities, and minority institutions  
5 in furtherance of section 2323 of this title.

6 “(d) PROCEDURES OTHER THAN COMPETITIVE PRO-  
7 CEDURES.—(1) Procedures other than competitive proce-  
8 dures may be used for purchasing property and services  
9 only when the use of competitive procedures is not feasible  
10 or appropriate. Standards for determining when the use  
11 of competitive procedures is not feasible or appropriate  
12 shall be set forth in the Federal Acquisition Regulation.  
13 Each procurement using procedures other than competi-  
14 tive procedures (other than a procurement for commercial  
15 items using simplified procedures or a procurement in an  
16 amount not greater than the simplified acquisition thresh-  
17 old) shall be justified in writing and approved in accord-  
18 ance with the Federal Acquisition Regulation.

19 “(2) In the case of a procurement using procedures  
20 that preclude all but one source from responding (herein-  
21 after in this subsection referred to as a ‘sole source pro-  
22 curement’), the Federal Acquisition Regulation shall pro-  
23 vide for justification and approval under paragraph (1) of  
24 such procurement under standards that set forth limited

1 circumstances for such sole source procurements, includ-  
2 ing circumstances when—

3 “(A) the property or services needed by the  
4 agency are available from only one responsible  
5 source and no other type of property or services will  
6 satisfy the needs of the agency;

7 “(B) the agency’s need for the property or serv-  
8 ices is of such an unusual and compelling urgency  
9 that the United States would be seriously injured  
10 unless the agency is permitted to award the contract  
11 for the property or services to a particular source;

12 “(C) it is necessary to award the contract to a  
13 particular source in order (i) to maintain a facility,  
14 producer, manufacturer, or other supplier available  
15 for furnishing property or services in case of a na-  
16 tional emergency or to achieve industrial mobiliza-  
17 tion, (ii) to establish or maintain an essential engi-  
18 neering, research, or development capability to be  
19 provided by an educational or other nonprofit insti-  
20 tution or a federally funded research and develop-  
21 ment center, or (iii) to procure the services of an ex-  
22 pert for use, in any litigation or dispute (including  
23 any reasonably foreseeable litigation or dispute) in-  
24 volving the Federal Government, in any trial, hear-  
25 ing, or proceeding before any court, administrative

1 tribunal, or agency, or in any part of an alternative  
2 dispute resolution process, whether or not the expert  
3 is expected to testify;

4 “(D) the terms of an international agreement  
5 or a treaty between the United States and a foreign  
6 government or international organization, or the  
7 written directions of a foreign government reimburs-  
8 ing the agency for the cost of the procurement of the  
9 property or services for such government, have the  
10 effect of requiring the award of the contract for the  
11 property or services to a particular source;

12 “(E) subject to section 2304f, a statute ex-  
13 pressly authorizes or requires that the procurement  
14 be made through another agency or from a specified  
15 source, or the agency’s need is for a brand-name  
16 commercial item for authorized resale;

17 “(F) the disclosure of the agency’s needs would  
18 compromise the national security unless the agency  
19 is permitted to award the contract for the property  
20 or services needed by the agency to a particular  
21 source; or

22 “(G) the head of the agency—

23 “(i) determines that it is necessary in the  
24 public interest to award the contract for the  
25 property or services needed by the agency to a



1 particular source in the particular procurement  
2 concerned, and

3 “(ii) notifies the Congress in writing of  
4 such determination not less than 30 days before  
5 the award of the contract.

6 “(3) The authority of the head of an agency under  
7 paragraph (2)(G) may not be delegated.

8 “(e) SIMPLIFIED PROCEDURES.—(1) In order to pro-  
9 mote efficiency and economy in contracting and to avoid  
10 unnecessary burdens for agencies and contractors, the  
11 Federal Acquisition Regulation shall provide for special  
12 simplified procedures for purchases of property and serv-  
13 ices for amounts not greater than the simplified acquisi-  
14 tion threshold.

15 “(2) A proposed purchase or contract for an amount  
16 above the simplified acquisition threshold may not be di-  
17 vided into several purchases or contracts for lesser  
18 amounts in order to use the simplified procedures required  
19 by paragraph (1).

20 “(3) In using simplified procedures, the head of an  
21 agency shall ensure that competition is obtained to the  
22 maximum extent practicable consistent with the particular  
23 Government requirement.

24 “(f) CERTAIN CONTRACTS.—For the purposes of the  
25 following laws, purchases or contracts awarded after using

1 procedures other than sealed-bid procedures shall be treat-  
2 ed as if they were made with sealed-bid procedures:

3 “(1) The Walsh-Healey Act (41 U.S.C. 35–45).

4 “(2) The Act entitled ‘An Act relating to the  
5 rate of wages for laborers and mechanics employed  
6 on public buildings of the United States and the  
7 District of Columbia by contractors and subcontrac-  
8 tors, and for other purposes’, approved March 3,  
9 1931 (commonly referred to as the ‘Davis-Bacon  
10 Act’) (40 U.S.C. 276a—276a–5).’.”

11 (2) Chapter 137 of title 10, United States Code, is  
12 amended by inserting before section 2305 a new section—

13 (A) the designation and heading for which is as  
14 follows:

15 “§ 2304f. Merit-based selection”;

16 and

17 (B) the text of which consists of subsection (j)  
18 of section 2304 of such title, as in effect on the day  
19 before the date of the enactment of this Act, modi-  
20 fied—

21 (i) by striking out the subsection designa-  
22 tion;

23 (ii) in paragraphs (2)(A), (3), and (4), by  
24 striking out “subsection” and inserting in lieu  
25 thereof “section” each place it appears;

1 (iii) in paragraph (2)(C), by striking out  
2 “paragraph (1)” and inserting in lieu thereof  
3 “subsection (a)”;

4 (iv) by redesignating paragraphs (1), (2),  
5 (3), and (4) as subsections (a), (b), (c), and  
6 (d), respectively; and

7 (v) in subsection (b) (as so redesignated),  
8 by redesignating subparagraphs (A), (B), and  
9 (C) as paragraphs (1), (2), and (3), respec-  
10 tively.

11 (3) The table of sections at the beginning of such  
12 chapter is amended by inserting before the item relating  
13 section 2305 the following new item:

“2304 f. Merit-based selection.”.

14 (b) CIVILIAN AGENCY ACQUISITIONS.—(1) Section  
15 303 of the Federal Property and Administrative Services  
16 Act of 1949 (41 U.S.C. 253) is amended to read as fol-  
17 lows:

18 **“SEC. 303. CONTRACTS: COMPETITION REQUIREMENTS.**

19 “(a) COMPETITION.—(1) Except as provided in sub-  
20 sections (b), (c), and (e) and except in the case of procure-  
21 ment procedures otherwise expressly authorized by stat-  
22 ute, an executive agency in conducting a procurement for  
23 property or services—

24 “(A) shall obtain full and open competition—

25 “(i) that provides open access, and

1           “(ii) that is consistent with the need to ef-  
2           ficiently fulfill the Government’s requirements,  
3           through the use of competitive procedures in accord-  
4           ance with this title and the Federal Acquisition Reg-  
5           ulation; and

6           “(B) shall use the competitive procedure or  
7           combination of competitive procedures that is best  
8           suited under the circumstances of the procurement.

9           “(2) In determining the competitive procedure appro-  
10          prium under the circumstances, an executive agency—

11           “(A) shall solicit sealed bids if—

12           “(i) time permits the solicitation, submis-  
13           sion, and evaluation of sealed bids;

14           “(ii) the award will be made on the basis  
15           of price and other price-related factors;

16           “(iii) it is not necessary to conduct discus-  
17           sions with the responding sources about their  
18           bids; and

19           “(iv) there is a reasonable expectation of  
20           receiving more than one sealed bid; and

21           “(B) shall request competitive proposals if  
22           sealed bids are not appropriate under clause (A).

23           “(b) EXCLUSION OF PARTICULAR SOURCE.—An ex-  
24          ecutive agency may provide for the procurement of prop-  
25          erty or services covered by this title using competitive pro-

cedures but excluding a particular source in order to establish or maintain an alternative source or sources of supply for that property or service. The Federal Acquisition Regulation shall set forth the circumstances under which a particular source may be excluded pursuant to this subsection.

“(c) EXCLUSION OF CONCERNS OTHER THAN SMALL BUSINESS CONCERNS AND CERTAIN OTHER ENTITIES.—  
An executive agency may provide for the procurement of property or services covered by this section using competitive procedures, but excluding concerns other than small business concerns in furtherance of sections 9 and 15 of the Small Business Act (15 U.S.C. 638, 644) and concerns other than small business concerns, historically Black colleges and universities, and minority institutions in furtherance of section 7102 of the Federal Acquisition Streamlining Act of 1994 (15 U.S.C. 644 note).

“(d) PROCEDURES OTHER THAN COMPETITIVE PROCEDURES.—(1) Procedures other than competitive procedures may be used for purchasing property and services only when the use of competitive procedures is not feasible or appropriate. Standards for determining when the use of competitive procedures is not feasible or appropriate shall be set forth in the Federal Acquisition Regulation. Each procurement using procedures other than competi-

1 tive procedures (other than a procurement for commercial  
2 items using simplified procedures or a procurement in an  
3 amount not greater than the simplified acquisition thresh-  
4 old) shall be justified in writing and approved in accord-  
5 ance with the Federal Acquisition Regulation.

6 “(2) In the case of a procurement using procedures  
7 that preclude all but one source from responding (herein-  
8 after in this subsection referred to as a ‘sole source pro-  
9 curement’), the Federal Acquisition Regulation shall pro-  
10 vide for justification and approval under paragraph (1) of  
11 such procurement under standards that set forth limited  
12 circumstances for such sole source procurements, includ-  
13 ing circumstances when—

14 “(A) the property or services needed by the ex-  
15 ecutive agency are available from only one respon-  
16 sible source and no other type of property or services  
17 will satisfy the needs of the executive agency;

18 “(B) the executive agency’s need for the prop-  
19 erty or services is of such an unusual and compelling  
20 urgency that the United States would be seriously  
21 injured unless the executive agency is permitted to  
22 award the contract for the property or services to a  
23 particular source;

24 “(C) it is necessary to award the contract to a  
25 particular source in order (i) to maintain a facility,

1 producer, manufacturer, or other supplier available  
2 for furnishing property or services in case of a na-  
3 tional emergency or to achieve industrial mobiliza-  
4 tion, (ii) to establish or maintain an essential engi-  
5 neering, research, or development capability to be  
6 provided by an educational or other nonprofit insti-  
7 tution or a federally funded research and develop-  
8 ment center, or (iii) to procure the services of an ex-  
9 pert for use, in any litigation or dispute (including  
10 any reasonably foreseeable litigation or dispute) in-  
11 volving the Federal Government, in any trial, hear-  
12 ing, or proceeding before any court, administrative  
13 tribunal, or agency, or in any part of an alternative  
14 dispute resolution process, whether or not the expert  
15 is expected to testify;

16 “(D) the terms of an international agreement  
17 or treaty between the United States Government and  
18 a foreign government or international organization,  
19 or the written directions of a foreign government re-  
20 imbursing the executive agency for the cost of the  
21 procurement of the property or services for such  
22 government, have the effect of requiring the award  
23 of the contract for the property or services to a par-  
24 ticular source;

1           “(E) subject to section 303M, a statute ex-  
2           pressly authorizes or requires that the procurement  
3           be made through another executive agency or from  
4           a specified source, or the agency’s need is for a  
5           brand-name commercial item for authorized resale;

6           “(F) the disclosure of the executive agency’s  
7           needs would compromise the national security unless  
8           the agency is permitted to award the contract for  
9           the property or services needed by the agency to a  
10          particular source; or

11          “(G) the head of the executive agency—

12                  “(i) determines that it is necessary in the  
13                  public interest to award the contract for the  
14                  property or services needed by the agency to a  
15                  particular source in the particular procurement  
16                  concerned, and

17                  “(ii) notifies the Congress in writing of  
18                  such determination not less than 30 days before  
19                  the award of the contract.

20          “(3) The authority of the head of an executive agency  
21          under paragraph (2)(G) may not be delegated.

22          “(e) SIMPLIFIED PROCEDURES.—(1) In order to pro-  
23          mote efficiency and economy in contracting and to avoid  
24          unnecessary burdens for agencies and contractors, the  
25          Federal Acquisition Regulation shall provide for special



1 simplified procedures for purchases of property and serv-  
2 ices for amounts not greater than the simplified acquisi-  
3 tion threshold.

4 “(2)(A) The Administrator of General Services shall  
5 prescribe regulations that provide special simplified proce-  
6 dures for acquisitions of leasehold interests in real prop-  
7 erty at rental rates that do not exceed the simplified acqui-  
8 sition threshold.

9 “(B) For purposes of subparagraph (A), the rental  
10 rate or rates under a multiyear lease do not exceed the  
11 simplified acquisition threshold if the average annual  
12 amount of the rent payable for the period of the lease does  
13 not exceed the simplified acquisition threshold.

14 “(3) A proposed purchase or contract or for an  
15 amount above the simplified acquisition threshold may not  
16 be divided into several purchases or contracts for lesser  
17 amounts in order to use the simplified procedures required  
18 by paragraph (1).

19 “(4) In using simplified procedures, an executive  
20 agency shall ensure that competition is obtained to the  
21 maximum extent practicable consistent with the particular  
22 Government requirement.”.

23 (2) Title III of the Federal Property and Administra-  
24 tive Services Act of 1949 (41 U.S.C. 251 et seq.) is  
25 amended by inserting after section 303L a new section—

1 (A) the designation and heading for which is as  
2 follows:

3 **“SEC. 303M. MERIT-BASED SELECTION.”;**

4 and

5 (B) the text of which consists of subsection (h)  
6 of section 303 of such Act, as in effect on the day  
7 before the date of the enactment of this Act, modi-  
8 fied—

9 (i) by striking out the subsection designa-  
10 tion;

11 (ii) in paragraphs (2)(A), (3), and (4), by  
12 striking out “subsection” and inserting in lieu  
13 thereof “section” each place it appears;

14 (iii) in paragraph (2)(C), by striking out  
15 “paragraph (1)” and inserting in lieu thereof  
16 “subsection (a)”;

17 (iv) by redesignating paragraphs (1), (2),  
18 (3), and (4) as subsections (a), (b), (c), and  
19 (d), respectively; and

20 (v) in subsection (b) (as so redesignated),  
21 by redesignating subparagraphs (A), (B), and  
22 (C) as paragraphs (1), (2), and (3), respec-  
23 tively.

1       (3) The table of contents for the Federal Property  
2 and Administrative Services Act of 1949 (contained in sec-  
3 tion 1(b)) is amended—

4           (A) by striking out the item relating to section  
5 303 and inserting in lieu thereof the following:

“Sec. 303. Contracts: competition requirements.”;

6       and

7           (B) by inserting after the item relating to sec-  
8 tion 303L the following new item:

“Sec. 303M. Merit-based selection.”.

9       (c) REVISIONS TO PROCUREMENT NOTICE PROVI-  
10 SIONS.—Section 18 of the Office of Federal Procurement  
11 Policy Act (41 U.S.C. 416) is amended—

12           (1) in subsection (a)—

13               (A) in subparagraph (B) of paragraph  
14 (1)—

15                   (i) by striking out “subsection (f)—”  
16 and all that follows through the end of the  
17 subparagraph and inserting in lieu thereof  
18 “subsection (b); and”; and

19                   (ii) by inserting after “property or  
20 services” the following: “for a price ex-  
21 pected to exceed \$10,000 but not to exceed  
22 \$25,000”;

23           (B) by striking out paragraph (4); and

1 (C) by redesignating paragraphs (5) and  
2 (6) as paragraphs (4) and (5), respectively; and  
3 (2) in subsection (b)—

4 (A) by amending subparagraph (B) of  
5 paragraph (2) to read as follows:

6 “(B) state whether the acquisition is to be  
7 conducted pursuant to a contractor verification  
8 system (as provided pursuant to section 35) or  
9 whether the offeror, its product, or its service  
10 otherwise must meet a qualification require-  
11 ment in order to be eligible for award and, if  
12 so, identify the criteria to be used in determin-  
13 ing such eligibility;” and

14 (B) by amending paragraph (4) to read as  
15 follows:

16 “(4) a statement that all responsible sources  
17 may submit for consideration a bid, proposal, or  
18 quotation;”.

19 (d) EXECUTIVE AGENCY RESPONSIBILITIES.—(1)  
20 Section 16 of the Office of Federal Procurement Policy  
21 Act (41 U.S.C. 414) is amended—

22 (A) by striking out “achieve” in the matter pre-  
23 ceding paragraph (1) and inserting in lieu thereof  
24 “promote”; and

1 (B) by amending paragraph (1) to read as fol-  
2 lows:

3 “(1) to implement competition that provides  
4 open access for responsible sources in the procure-  
5 ment of property or services by the executive agency  
6 by establishing policies, procedures, and practices  
7 that are consistent with the need to efficiently fulfill  
8 the Government’s requirements;”.

9 (2) Section 20 of such Act (41 U.S.C. 418) is amend-  
10 ed in subsection (a)(2)(A) by striking out “serving in a  
11 position authorized for such executive agency on the date  
12 of enactment of the Competition in Contracting Act of  
13 1984”.

14 **SEC. 102. DEFINITIONS RELATING TO COMPETITION RE-**  
15 **QUIREMENTS.**

16 (a) DEFINITION.—Paragraphs (5) and (6) of section  
17 4 of the Office of Federal Procurement Policy Act (41  
18 U.S.C. 403) are amended to read as follows:

19 “(5) The term ‘competitive procedures’ means  
20 procedures under which an agency enters into a con-  
21 tract pursuant to full and open competition that pro-  
22 vides open access and is consistent with the need to  
23 efficiently fulfill the Government’s requirements.

24 “(6) The term ‘open access’, when used with re-  
25 spect to a procurement, means that all responsible

1 sources are permitted to submit sealed bids or com-  
2 petitive proposals on the procurement.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) OFFICE OF FEDERAL PROCUREMENT POL-  
5 ICY ACT.—Section 20 of the Office of Federal Pro-  
6 curement Policy Act is amended—

7 (A) in subsection (b)(1), subsection  
8 (b)(3)(A), and subsection (c), by inserting after  
9 “full and open competition” the following: “that  
10 provides open access and is consistent with the  
11 need to efficiently fulfill the Government’s re-  
12 quirements” each place it appears; and

13 (B) in subsection (b)(4)(C), by striking out  
14 “to full and open competition that remain” and  
15 inserting in lieu thereof “that remain to achiev-  
16 ing full and open competition that provides  
17 open access and is consistent with the need to  
18 efficiently fulfill the Government’s require-  
19 ments”.

20 (2) TITLE 10.—Title 10, United States Code, is  
21 amended—

22 (A) in section 2302(2), by striking out the  
23 first sentence and inserting in lieu thereof the  
24 following: “The term ‘competitive procedures’  
25 means procedures under which an agency enters

1 into a contract pursuant to full and open com-  
2 petition that provides open access and is con-  
3 sistent with the need to efficiently fulfill the  
4 Government's requirements.”;

5 (B) in section 2302(3)(D), by striking out  
6 “full and open competition” and inserting in  
7 lieu thereof “open access”;

8 (C) in section 2323(e)(3), by striking out  
9 “less than full and open” and inserting in lieu  
10 thereof “procedures other than”; and

11 (D) in section 2323(i)(3)(A), by striking  
12 out “full and open”.

13 (3) FEDERAL PROPERTY AND ADMINISTRATIVE  
14 SERVICES ACT.—Title III of the Federal Property  
15 and Administrative Services Act of 1949 (41 U.S.C.  
16 251 et seq.) is amended—

17 (A) in section 309(b), by striking out the  
18 first sentence and inserting in lieu thereof the  
19 following: “The term ‘competitive procedures’  
20 means procedures under which an executive  
21 agency enters into a contract pursuant to full  
22 and open competition that provides open access  
23 and is consistent with the need to efficiently  
24 fulfill the Government's requirements.”;

1 (B) in section 309(c)(4), by striking out  
2 “full and open competition” and inserting in  
3 lieu thereof “open access”; and

4 (C) in section 304B(a)(2)(B), by striking  
5 out “encouraging full and open competition or”.

6 (4) OTHER LAWS.—Section 7102 of the Federal  
7 Acquisition Streamlining Act of 1994 (108 Stat.  
8 3367; 15 U.S.C. 644 note) is amended in subsection  
9 (a)(1)(A) by striking out “less than full and open  
10 competition” and inserting in lieu thereof “proce-  
11 dures other than competitive procedures”.

12 **SEC. 103. CONTRACT SOLICITATION AMENDMENTS.**

13 (a) ARMED SERVICES ACQUISITIONS.—Section 2305  
14 of title 10, United States Code, is amended—

15 (1) in subsection (a)(1)—

16 (A) by striking out subparagraph (A) and  
17 inserting in lieu thereof the following: “(A) In  
18 preparing for the procurement of property or  
19 services, the head of an agency shall use ad-  
20 vance procurement planning and market re-  
21 search.”;

22 (B) by striking out subparagraph (B); and

23 (C) by redesignating subparagraph (C) as  
24 subparagraph (B) and in that subparagraph by  
25 striking out “For the purposes of subpara-



1           graphs (A) and (B), the” and inserting in lieu  
2           thereof “Each solicitation under this chapter  
3           shall include specifications that include restric-  
4           tive provisions or conditions only to the extent  
5           necessary to satisfy the needs of the agency or  
6           as authorized by law. The”;

7           (2) in subsection (a)(2), by inserting after  
8           “(other than for” the following: “a procurement for  
9           commercial items using simplified procedures or”;  
10          and

11          (3) in subsection (b)(4)(A)(i), by striking out  
12          “all” and inserting in lieu thereof “the”.

13          (b) CIVILIAN AGENCY ACQUISITIONS.—(1) Section  
14          303A of the Federal Property and Administrative Services  
15          Act of 1949 (41 U.S.C. 253a) is amended—

16               (A) in subsection (a)—

17                   (i) by striking out paragraph (1) and in-  
18                   serting in lieu thereof the following: “(1) In  
19                   preparing for the procurement of property or  
20                   services, an executive agency shall use advance  
21                   procurement planning and market research.”;

22                   (ii) by striking out paragraph (2); and

23                   (iii) by redesignating paragraph (3) as  
24                   paragraph (2) and in that paragraph by strik-  
25                   ing out “For the purposes of paragraphs (1)

1           and (2), the” and inserting in lieu there of  
2           “Each solicitation under this title shall include  
3           specifications that include restrictive provisions  
4           or conditions only to the extent necessary to  
5           satisfy the needs of the executive agency or as  
6           authorized by law. The”; and

7           (B) in subsection (b), by inserting after “(other  
8           than for” the following: “a procurement for commer-  
9           cial items using simplified procedures or”.

10          (2) Section 303B(d)(1)(A) of such Act (41 U.S.C.  
11          253b) is amended by striking out “all” and inserting in  
12          lieu thereof “the”.

13       **SEC. 104. PREAWARD DEBRIEFINGS.**

14          (a) ARMED SERVICES ACQUISITIONS.—Section  
15          2305(b) of title 10, United States Code, is amended—

16               (1) by striking out subparagraph (F) of para-  
17               graph (5);

18               (2) by redesignating paragraph (6) as para-  
19               graph (8); and

20               (3) by inserting after paragraph (5) the follow-  
21               ing new paragraphs:

22               “(6)(A) When the contracting officer excludes an  
23               offeror submitting a competitive proposal from the com-  
24               petitive range (or otherwise excludes such an offeror from  
25               further consideration prior to the final source selection de-

1 cision), the excluded offeror may request in writing, within  
2 three days after the date on which the excluded offeror  
3 receives notice of its exclusion, a debriefing prior to award.  
4 The contracting officer shall make every effort to debrief  
5 the unsuccessful offeror as soon as practicable but may  
6 refuse the request for a debriefing if it is not in the best  
7 interests of the Government to conduct a debriefing at  
8 that time.

9 “(B) The contracting officer is required to debrief an  
10 excluded offeror in accordance with paragraph (5) of this  
11 section only if that offeror requested and was refused a  
12 preaward debriefing under subparagraph (A) of this para-  
13 graph.

14 “(C) The debriefing conducted under this subsection  
15 shall include—

16 “(i) the executive agency’s evaluation of the sig-  
17 nificant elements in the offeror’s offer;

18 “(ii) a summary of the rationale for the  
19 offeror’s exclusion; and

20 “(iii) reasonable responses to relevant questions  
21 posed by the debriefed offeror as to whether source  
22 selection procedures set forth in the solicitation, ap-  
23 plicable regulations, and other applicable authorities  
24 were followed by the executive agency.

1       “(D) The debriefing conducted pursuant to this sub-  
2 section may not disclose the number or identity of other  
3 offerors and shall not disclose information about the con-  
4 tent, ranking, or evaluation of other offerors’ proposals.

5       “(7) The contracting officer shall include a summary  
6 of any debriefing conducted under paragraph (5) or (6)  
7 in the contract file.”.

8       (b) CIVILIAN AGENCY ACQUISITIONS.—Section 303B  
9 of the Federal Property and Administrative Services Act  
10 of 1949 (41 U.S.C. 253b) is amended—

11           (1) by striking out paragraph (6) of subsection  
12       (e);

13           (2) by redesignating subsections (f), (g), (h),  
14       and (i) as subsections (h), (i), (j), and (k), respec-  
15       tively; and

16           (3) by inserting after subsection (e) the follow-  
17       ing new subsections:

18       “(f)(1) When the contracting officer excludes an  
19 offeror submitting a competitive proposal from the com-  
20 petitive range (or otherwise excludes such an offeror from  
21 further consideration prior to the final source selection de-  
22 cision), the excluded offeror may request in writing, within  
23 3 days after the date on which the excluded offeror re-  
24 ceives notice of its exclusion, a debriefing prior to award.  
25 The contracting officer shall make every effort to debrief

1 the unsuccessful offeror as soon as practicable but may  
2 refuse the request for a debriefing if it is not in the best  
3 interests of the Government to conduct a debriefing at  
4 that time.

5 “(2) The contracting officer is required to debrief an  
6 excluded offeror in accordance with subsection (e) of this  
7 section only if that offeror requested and was refused a  
8 preaward debriefing under paragraph (1) of this sub-  
9 section.

10 “(3) The debriefing conducted under this subsection  
11 shall include—

12 “(A) the executive agency’s evaluation of the  
13 significant elements in the offeror’s offer;

14 “(B) a summary of the rationale for the  
15 offeror’s exclusion; and

16 “(C) reasonable responses to relevant questions  
17 posed by the debriefed offeror as to whether source  
18 selection procedures set forth in the solicitation, ap-  
19 plicable regulations, and other applicable authorities  
20 were followed by the executive agency.

21 “(4) The debriefing conducted pursuant to this sub-  
22 section may not disclose the number or identity of other  
23 offerors and shall not disclose information about the con-  
24 tent, ranking, or evaluation of other offerors’ proposals.

1 “(g) The contracting officer shall include a summary  
2 of any debriefing conducted under subsection (e) or (f)  
3 in the contract file.”.

4 **SEC. 105. CONTRACT TYPES.**

5 (a) ARMED SERVICES ACQUISITIONS.—(1) Section  
6 2306 of title 10, United States Code, is amended—

7 (A) by inserting before the period at the end of  
8 subsection (a) the following: “, based on market con-  
9 ditions, established commercial practice (if any) for  
10 the product or service being acquired, and sound  
11 business judgment”;

12 (B) by striking out subsections (b), (d), (e), (f),  
13 and (h); and

14 (C) by redesignating subsection (g) as sub-  
15 section (b).

16 (2) The heading of such section is amended to read  
17 as follows:

18 **“§ 2306. Contract types”.**

19 (3) The item relating to section 2306 in the table of  
20 sections at the beginning of chapter 137 of such title is  
21 amended to read as follows:

“2306. Contract types.”.

22 (b) CIVILIAN AGENCY ACQUISITIONS.—(1) Section  
23 304 of the Federal Property and Administrative Services  
24 Act of 1949 (41 U.S.C. 254) is amended—

1 (A) by inserting before the period at the end of  
2 the first sentence of subsection (a) the following: “,  
3 based on market conditions, established commercial  
4 practice (if any) for the product or service being ac-  
5 quired, and sound business judgment”;

6 (B) by striking out “Every contract awarded”  
7 in the second sentence of subsection (a) and all that  
8 follows through the end of the subsection; and

9 (C) in subsection (b), by striking out “used,” in  
10 the first sentence and all that follows through the  
11 end of the subsection and inserting in lieu thereof  
12 “used.”.

13 (2) The heading of such section is amended to read  
14 as follows:

15 **“SEC. 304. CONTRACT TYPES.”.**

16 (3) The item relating to section 304 in the table of  
17 contents for such Act (contained in section 1(b)) is amend-  
18 ed to read as follows:

“Sec. 304. Contract types.”.

19 (c) CONFORMING REPEALS.—(1) Sections 4540,  
20 7212, and 9540 of title 10, United States Code, are re-  
21 pealed.

22 (2) The table of sections at the beginning of chapter  
23 433 of such title is amended by striking out the item relat-  
24 ing to section 4540.

1       (3) The table of sections at the beginning of chapter  
2 631 of such title is amended by striking out the item relat-  
3 ing to section 7212.

4       (4) The table of sections at the beginning of chapter  
5 933 of such title is amended by striking out the item relat-  
6 ing to section 9540.

7       (d) CIVIL WORKS AUTHORITY.—(1) Part IV of sub-  
8 title A of title 10, United States Code, is amended—

9           (A) by transferring section 2855 to the end of  
10 chapter 137; and

11           (B) by striking out the section heading and  
12 subsection (a) of such section and inserting in lieu  
13 thereof the following:

14 **“§ 2332. Contracts for architectural and engineering**  
15 **services**

16       “(a) The Secretary of Defense and the Secretaries  
17 of the military departments may enter into contracts for  
18 architectural and engineering services in connection with  
19 a military construction or family housing project or for  
20 other Department of Defense or military department pur-  
21 poses. Such contracts shall be awarded in accordance with  
22 the Brooks Architect-Engineers Act (40 U.S.C. 541 et  
23 seq.).”.



1       (2) The table of sections at the beginning of chapter  
2 137 of such title is amended by adding at the end the  
3 following new item:

“2332. Contracts for architectural and engineering services.”.

4       (3) The table of sections at the beginning of chapter  
5 169 of such title is amended by striking out the item relat-  
6 ing to section 2855.

7 **SEC. 106. CONTRACTOR PERFORMANCE.**

8       (a) REQUIREMENT FOR SYSTEM.—The Office of Fed-  
9 eral Procurement Policy Act (41 U.S.C. 401 et seq.) is  
10 amended by adding at the end the following new section:

11 **“SEC. 35. CONTRACTOR PERFORMANCE.**

12       “(a) VERIFICATION SYSTEM.—

13               “(1) REQUIREMENT.—The Federal Acquisition  
14 Regulation shall provide for a contractor verification  
15 system in accordance with this section.

16               “(2) PROCEDURES.—The Federal Acquisition  
17 Regulation shall provide procedures for the head of  
18 an executive agency to follow in order to verify a  
19 contractor as eligible to compete for contracts to fur-  
20 nish property or services that are procured by the  
21 executive agency on a recurring basis.

22               “(3) NOTIFICATION.—The procedures shall in-  
23 clude a requirement that the head of an executive  
24 agency provide for the publication of appropriate no-

1       tification about the verification system in the Com-  
2       merce Business Daily.

3       “(b) EVALUATION.—(1) Under the procedures re-  
4       ferred to in subsection (a)(2), the head of an executive  
5       agency in granting a verification to a contractor shall use  
6       the following factors as the basis of the evaluation:

7               “(A) The efficiency and effectiveness of its  
8       business practices.

9               “(B) The level of quality of its product or serv-  
10      ice.

11              “(C) Past performance of the contractor with  
12      regard to the particular property or service.

13      “(2)(A) The evaluation of past performance may in-  
14      clude performance under—

15              “(i) a contract with an executive agency of the  
16      Federal Government;

17              “(ii) a contract with an agency of a State or  
18      local government; or

19              “(iii) a contract with an entity in the private  
20      sector.

21      “(B) The procedures shall include a requirement  
22      that, in the case of a contractor with respect to which  
23      there is no information on past contract performance or  
24      with respect to which information on past contract per-  
25      formance is not available, the contractor may not be evalu-

1 ated favorably or unfavorably on the factor of past per-  
2 formance.

3 “(c) OPPORTUNITY FOR ALL INTERESTED  
4 SOURCES.—The Federal Acquisition Regulation shall pro-  
5 vide procedures for ensuring that all interested sources,  
6 including small businesses, have a fair opportunity to be  
7 considered for verification under the verification system.

8 “(d) PROCUREMENT FROM VERIFIED CONTRAC-  
9 TORS.—The Federal Acquisition Regulation shall provide  
10 procedures under which the head of an executive agency  
11 may enter into a contract for the procurement of property  
12 or services referred to in subsection (a)(2) on the basis  
13 of a competition in accordance with section 2304 of title  
14 10, United States Code, or section 303 of the Federal  
15 Property and Administrative Services Act of 1949 (41  
16 U.S.C. 253) for contractors verified with respect to such  
17 property or services pursuant to the contractor verification  
18 system.

19 “(e) TERMINATION OF VERIFICATION.—The Federal  
20 Acquisition Regulation shall provide procedures under  
21 which the head of an executive agency—

22 “(1) may provide for the termination of a ver-  
23 ification granted a contractor under this section  
24 upon the expiration of a period specified by the head  
25 of an executive agency;

1           “(2) may revoke a verification granted a con-  
2           tractor under this section upon a determination that  
3           the quality of performance of the contractor does not  
4           meet standards applied by the head of the executive  
5           agency as of the time of the revocation decision; and

6           “(3) may provide that a contractor whose ver-  
7           ification is terminated or revoked will have a fair op-  
8           portunity to be considered for reentry into the ver-  
9           ification system.

10          “(f) SPECIAL APPLICABILITY RULE.—Notwithstand-  
11          ing section 34, the verification system shall apply to the  
12          procurement of commercial items.”.

13          (b) REPEALS.—Section 2319 of title 10, United  
14          States Code, is repealed. Section 303C of the Federal  
15          Property and Administrative Services Act of 1949 (41  
16          U.S.C. 253c) is repealed.

17          (c) CLERICAL AMENDMENTS.—(1) The table of con-  
18          tents for the Office of Federal Procurement Policy Act  
19          (contained in section 1(b)) is amended by adding at the  
20          end the following new item:

          “Sec. 35. Contractor performance.”.

21          (2) The table of sections at the beginning of chapter  
22          137 of title 10, United States Code, is amended by strik-  
23          ing out the item relating to section 2319.

24          (3) The table of contents for the Federal Property  
25          and Administrative Services Act of 1949 (contained in sec-

tion 1(b)) is amended by striking out the item relating to section 303C.

**SEC. 107. TWO-PHASE SELECTION PROCEDURES.**

(a) ARMED SERVICES ACQUISITIONS.—(1) Chapter 137 of title 10, United States Code, is amended by inserting after section 2305 the following new section:

**“§ 2305a. Two-phase selection procedures**

“(a) AUTHORIZATION.—Unless the traditional acquisition approach of design-bid-build is used or another acquisition procedure authorized by law is used, the head of an agency shall use the two-phase selection procedures authorized in this section for entering into a contract for the design and construction of a public building, facility, or work when a determination is made under subsection (b) that the procedures are appropriate for use.

“(b) CRITERIA FOR USE.—A contracting officer shall make a determination whether two-phase selection procedures are appropriate for use for entering into a contract for the design and construction of a public building, facility, or work when the contracting officer anticipates that three or more offers will be received for such contract, design work must be performed before an offeror can develop a price or cost proposal for such contract, the offeror will incur a substantial amount of expense in preparing the

1 offer, and the contracting officer has considered informa-  
2 tion such as the following:

3 “(1) The extent to which the project require-  
4 ments have been adequately defined.

5 “(2) The time constraints for delivery of the  
6 project.

7 “(3) The capability and experience of potential  
8 contractors.

9 “(4) The suitability of the project for use of the  
10 two-phase selection procedures.

11 “(5) The capability of the agency to manage  
12 the two-phase selection process.

13 “(6) Other criteria established by the agency.

14 “(c) PROCEDURES DESCRIBED.—Two-phase selec-  
15 tion procedures consist of the following:

16 “(1) The agency develops, either in-house or by  
17 contract, a scope of work statement for inclusion in  
18 the solicitation that defines the project and provides  
19 prospective offerors with sufficient information re-  
20 garding the Government’s requirements (which may  
21 include criteria and preliminary design, budget pa-  
22 rameters, and schedule or delivery requirements) to  
23 enable the offerors to submit proposals which meet  
24 the Government’s needs. When the two-phase selec-  
25 tion procedure is used for design and construction of

1 a public building, facility, or work and the agency  
2 contracts for development of the scope of work state-  
3 ment, the agency shall contract for architectural/en-  
4 gineering services as defined by and in accordance  
5 with the Brooks Architect-Engineers Act (40 U.S.C.  
6 541 et seq.).

7 “(2) The contracting officer solicits phase-one  
8 proposals that—

9 “(A) include information on the offeror’s—

10 “(i) technical approach; and

11 “(ii) technical qualifications; and

12 “(B) do not include—

13 “(i) detailed design information; or

14 “(ii) cost or price information.

15 “(3) The evaluation factors to be used in evalu-  
16 ating phase-one proposals are stated in the solicita-  
17 tion and include specialized experience and technical  
18 competence, capability to perform, past performance  
19 of the offeror’s team (including the architect-engi-  
20 neer and construction members of the team if the  
21 project is for the construction of a public building,  
22 facility, or work) and other appropriate factors, ex-  
23 cept that cost-related or price-related evaluation fac-  
24 tors are not permitted. Each solicitation establishes  
25 the relative importance assigned to the evaluation

1 factors and subfactors that must be considered in  
2 the evaluation of phase-one proposals. The agency  
3 evaluates phase-one proposals on the basis of the  
4 phase-one evaluation factors set forth in the solicita-  
5 tion.

6 “(4) The contracting officer selects as the most  
7 highly qualified the number of offerors specified in  
8 the solicitation to provide the property or services  
9 under the contract and requests the selected offerors  
10 to submit phase-two competitive proposals that in-  
11 clude technical proposals and cost or price informa-  
12 tion. Each solicitation establishes with respect to  
13 phase two—

14 “(A) the technical submission for the pro-  
15 posal, including design concepts or proposed so-  
16 lutions to requirements addressed within the  
17 scope of work (or both), and

18 “(B) the evaluation factors and subfactors,  
19 including cost or price, that must be considered  
20 in the evaluations of proposals in accordance  
21 with section 2305(b)(4) of this title.

22 The contracting officer separately evaluates the sub-  
23 missions described in subparagraphs (A) and (B).

24 “(5) The agency awards the contract in accord-  
25 ance with section 2305(b)(4) of this title.



1       “(d) SOLICITATION TO STATE NUMBER OF  
2 OFFERORS TO BE SELECTED FOR PHASE TWO RE-  
3 QUESTS FOR COMPETITIVE PROPOSALS.—A solicitation  
4 issued pursuant to the procedures described in subsection  
5 (c) shall state the maximum number of offerors that are  
6 to be selected to submit competitive proposals pursuant  
7 to subsection (c)(4). The maximum number specified in  
8 the solicitation shall not exceed 5 unless the agency deter-  
9 mines with respect to an individual solicitation that a spec-  
10 ified number greater than 5 is in the Government’s inter-  
11 est and is consistent with the purposes and objectives of  
12 the two-phase selection process.

13       “(e) REQUIREMENT FOR GUIDANCE AND REGULA-  
14 TIONS.—The Federal Acquisition Regulatory Council, es-  
15 tablished by section 25(a) of the Office of Federal Pro-  
16 curement Policy Act (41 U.S.C. 421(a)), shall provide  
17 guidance and promulgate regulations—

18               “(1) regarding the factors that may be consid-  
19 ered in determining whether the two-phase contract-  
20 ing procedures authorized by subsection (a) are ap-  
21 propriate for use in individual contracting situations;

22               “(2) regarding the factors that may be used in  
23 selecting contractors; and

24               “(3) providing for a uniform approach to be  
25 used Government-wide.”.

1       (2) The table of sections at the beginning of chapter  
2 137 of such title is amended by adding after the item re-  
3 lating to section 2305 the following new item:

“2305a. Two-phase selection procedures.”.

4       (b) CIVILIAN AGENCY ACQUISITIONS.—(1) Title III  
5 of the Federal Property and Administrative Services Act  
6 of 1949 (41 U.S.C. 251 et seq.) is amended by inserting  
7 after section 303L the following new section:

8       “(a) AUTHORIZATION.—Unless the ‘traditional’ ac-  
9 quisition approach of design-bid-build is used or another  
10 acquisition procedure authorized by law is used, the head  
11 of an executive agency shall use the two-phase selection  
12 procedures authorized in this section for entering into a  
13 contract for the design and construction of a public build-  
14 ing, facility, or work when a determination is made under  
15 subsection (b) that the procedures are appropriate for use.  
16 The two-phase selection procedures authorized in this sec-  
17 tion may also be used for entering into a contract for the  
18 acquisition of property or services other than construction  
19 services when such a determination is made.

20       “(b) CRITERIA FOR USE.—A contracting officer shall  
21 make a determination whether two-phase selection proce-  
22 dures are appropriate for use for entering into a contract  
23 for the design and construction of a public building, facil-  
24 ity, or work when the contracting officer anticipates that  
25 three or more offers will be received for such contract, de-

1 sign work must be performed before an offeror can develop  
2 a price or cost proposal for such contract, the offeror will  
3 incur a substantial amount of expense in preparing the  
4 offer, and the contracting officer has considered informa-  
5 tion such as the following:

6           “(1) The extent to which the project require-  
7           ments have been adequately defined.

8           “(2) The time constraints for delivery of the  
9           project.

10           “(3) The capability and experience of potential  
11           contractors.

12           “(4) The suitability of the project for use of the  
13           two-phase selection procedures.

14           “(5) The capability of the agency to manage  
15           the two-phase selection process.

16           “(6) Other criteria established by the agency.

17           “(c) PROCEDURES DESCRIBED.—Two-phase selec-  
18           tion procedures consist of the following:

19           “(1) The agency develops, either in-house or by  
20           contract, a scope of work statement for inclusion in  
21           the solicitation that defines the project and provides  
22           prospective offerors with sufficient information re-  
23           garding the Government’s requirements (which may  
24           include criteria and preliminary design, budget pa-  
25           rameters, and schedule or delivery requirements) to

1 enable the offerors to submit proposals which meet  
2 the Government's needs. When the two-phase selec-  
3 tion procedure is used for design and construction of  
4 a public building, facility, or work and the agency  
5 contracts for development of the scope of work state-  
6 ment, the agency shall contract for architectural/en-  
7 gineering services as defined by and in accordance  
8 with the Brooks Architect-Engineers Act (40 U.S.C.  
9 541 et seq.).

10 “(2) The contracting officer solicits phase-one  
11 proposals that—

12 “(A) include information on the offeror's—

13 “(i) technical approach; and

14 “(ii) technical qualifications; and

15 “(B) do not include—

16 “(i) detailed design information; or

17 “(ii) cost or price information.

18 “(3) The evaluation factors to be used in evalu-  
19 ating phase-one proposals are stated in the solicita-  
20 tion and include specialized experience and technical  
21 competence, capability to perform, past performance  
22 of the offeror's team (including the architect-engi-  
23 neer and construction members of the team if the  
24 project is for the construction of a public building,  
25 facility, or work) and other appropriate factors, ex-

1       cept that cost-related or price-related evaluation fac-  
2       tors are not permitted. Each solicitation establishes  
3       the relative importance assigned to the evaluation  
4       factors and subfactors that must be considered in  
5       the evaluation of phase-one proposals. The agency  
6       evaluates phase-one proposals on the basis of the  
7       phase-one evaluation factors set forth in the solicita-  
8       tion.

9               “(4) The contracting officer selects as the most  
10       highly qualified the number of offerors specified in  
11       the solicitation to provide the property or services  
12       under the contract and requests the selected offerors  
13       to submit phase-two competitive proposals that in-  
14       clude technical proposals and cost or price informa-  
15       tion. Each solicitation establishes with respect to  
16       phase two—

17               “(A) the technical submission for the pro-  
18       posal, including design concepts or proposed so-  
19       lutions to requirements addressed within the  
20       scope of work (or both), and

21               “(B) the evaluation factors and subfactors,  
22       including cost or price, that must be considered  
23       in the evaluations of proposals in accordance  
24       with section 303B(d).

1       The contracting officer separately evaluates the sub-  
2       missions described in subparagraphs (A) and (B).

3               “(5) The agency awards the contract in accord-  
4       ance with section 303B of this title.

5       “(d) SOLICITATION TO STATE NUMBER OF  
6 OFFERORS TO BE SELECTED FOR PHASE TWO RE-  
7 QUESTS FOR COMPETITIVE PROPOSALS.—A solicitation  
8 issued pursuant to the precedures described in subsection  
9 (c) shall state the maximum number of offerors that are  
10 to be selected to submit competitive proposals pursuant  
11 to subsection (c)(4). The maximum number specified in  
12 the solicitation shall not exceed 5 unless the agency deter-  
13 mines with respect to an individual solicitation that a spec-  
14 ified number greater than 5 is in the Government’s inter-  
15 est and is consistent with the purposes and objectives of  
16 the two-phase selection process.

17       “(e) REQUIREMENT FOR GUIDANCE AND REGULA-  
18 TIONS.—The Federal Acquisition Regulatory Council, es-  
19 tablished by section 25(a) of the Office of Federal Pro-  
20 curement Policy Act (41 U.S.C. 421(a)), shall provide  
21 guidance and promulgate regulations—

22               “(1) regarding the factors that may be consid-  
23       ered in determining whether the two-phase contract-  
24       ing procedures authorized by subsection (a) are ap-  
25       propriate for use in individual contracting situations;

1 “(2) regarding the factors that may be used in  
2 selecting contractors; and

3 “(3) providing for a uniform approach to be  
4 used Government-wide.”.

5 (2) The table of sections at the beginning of such Act  
6 is amended by inserting after the item relating to section  
7 303L the following new item:

“Sec. 303M. Two-phase selection procedures.”.

## 8 **TITLE II—COMMERCIAL ITEMS**

### 9 **SEC. 201. COMMERCIAL ITEM EXCEPTION TO REQUIRE-** 10 **MENT FOR COST OR PRICING DATA AND IN-** 11 **FORMATION LIMITATIONS.**

12 (a) ARMED SERVICES ACQUISITIONS.—(1) Sub-  
13 sections (b), (c), and (d) of section 2306a of title 10, Unit-  
14 ed States Code, are amended to read as follows:

15 “(b) EXCEPTIONS.—

16 “(1) IN GENERAL.—Submission of cost or pric-  
17 ing data shall not be required under subsection (a)  
18 in the case of a contract, a subcontract, or modifica-  
19 tion of a contract or subcontract—

20 “(A) for which the price agreed upon is  
21 based on—

22 “(i) adequate price competition; or

23 “(ii) prices set by law or regulation;

24 “(B) for the acquisition of a commercial  
25 item; or

1           “(C) in an exceptional case when the head  
2           of the procuring activity, without delegation, de-  
3           termines that the requirements of this section  
4           may be waived and justifies in writing the rea-  
5           sons for such determination.

6           “(2) MODIFICATIONS OF CONTRACTS AND SUB-  
7           CONTRACTS FOR COMMERCIAL ITEMS.—In the case  
8           of a modification of a contract or subcontract for a  
9           commercial item that is not covered by the exception  
10          on the submission of cost or pricing data in para-  
11          graph (1)(A) or (1)(B), submission of cost or pricing  
12          data shall not be required under subsection (a) if—

13               “(A) the contract or subcontract being  
14               modified is a contract or subcontract for which  
15               submission of cost or pricing data may not be  
16               required by reason of paragraph (1)(A) or  
17               (1)(B); and

18               “(B) the modification would not change  
19               the contract or subcontract, as the case may be,  
20               from a contract or subcontract for the acquisi-  
21               tion of a commercial item to a contract or sub-  
22               contract for the acquisition of an item other  
23               than a commercial item.

24          “(c) AUTHORITY TO REQUIRE COST OR PRICING  
25          DATA ON BELOW-THRESHOLD CONTRACTS.—(1) Subject



1 to paragraph (2), when certified cost or pricing data are  
2 not required to be submitted by subsection (a) for a con-  
3 tract, subcontract, or modification of a contract or sub-  
4 contract, such data may nevertheless be required to be  
5 submitted by the head of the procuring activity, but only  
6 if the head of the procuring activity determines that such  
7 data are necessary for the evaluation by the agency of the  
8 reasonableness of the price of the contract, subcontract,  
9 or modification of a contract or subcontract. In any case  
10 in which the head of the procuring activity requires such  
11 data to be submitted under this subsection, the head of  
12 the procuring activity shall justify in writing the reason  
13 for such requirement.

14 “(2) The head of the procuring activity may not re-  
15 quire certified cost or pricing data to be submitted under  
16 this paragraph for any contract or subcontract, or modi-  
17 fication of a contract or subcontract, covered by the excep-  
18 tions in subparagraph (A) or (B) of subsection (b)(1).

19 “(3) The head of a procuring activity may not dele-  
20 gate functions under this paragraph.

21 “(d) LIMITATIONS ON OTHER INFORMATION.—The  
22 Federal Acquisition Regulation shall include the following:

23 “(1) Provisions concerning the types of infor-  
24 mation that contracting officers may consider in de-  
25 termining whether the price of a procurement to the

1 Government is fair and reasonable when certified  
2 cost or pricing data are not required to be submitted  
3 under this section, including appropriate information  
4 on the prices at which the same item or similar  
5 items have previously been sold that is adequate for  
6 evaluating the reasonableness of the price of the pro-  
7 posed contract or subcontract for the procurement.

8 “(2) Reasonable limitations on requests for  
9 sales data relating to commercial items.

10 “(3) A requirement that a contracting officer  
11 shall, to the maximum extent practicable, limit the  
12 scope of any request for information relating to com-  
13 mercial items from an offeror to only that informa-  
14 tion that is in the form regularly maintained by the  
15 offeror in commercial operations.

16 “(4) A statement that any information received  
17 relating to commercial items that is exempt from  
18 disclosure under section 552(b) of title 5 shall not  
19 be disclosed by the Federal Government.”.

20 (2) Section 2306a of such title is further amended—

21 (A) by striking out subsection (h); and

22 (B) by redesignating subsection (i) as sub-  
23 section (h).

24 (3) Section 2375 of title 10, United States Code, is  
25 amended by striking out subsection (c).

1       (b) CIVILIAN AGENCY ACQUISITIONS.—(1) Sub-  
2 sections (b), (c) and (d) of section 304A of the Federal  
3 Property and Administrative Services Act of 1949 (41  
4 U.S.C. 254b) are amended to read as follows:

5       “(b) EXCEPTIONS.—

6               “(1) IN GENERAL.—Submission of cost or pric-  
7 ing data shall not be required under subsection (a)  
8 in the case of a contract, a subcontract, or a modi-  
9 fication of a contract or subcontract—

10               “(A) for which the price agreed upon is  
11 based on—

12                       “(i) adequate price competition; or

13                       “(ii) prices set by law or regulation;

14               “(B) for the acquisition of a commercial  
15 item; or

16               “(C) in an exceptional case when the head  
17 of the procuring activity, without delegation, de-  
18 termines that the requirements of this section  
19 may be waived and justifies in writing the rea-  
20 sons for such determination.

21       “(2) MODIFICATIONS OF CONTRACTS AND SUB-  
22 CONTRACTS FOR COMMERCIAL ITEMS.—In the case  
23 of a modification of a contract or subcontract for a  
24 commercial item that is not covered by the exception  
25 on the submission of cost or pricing data in para-

1 graph (1)(A) or (1)(B), submission of cost or pricing  
2 data shall not be required under subsection (a) if—

3 “(A) the contract or subcontract being  
4 modified is a contract or subcontract for which  
5 submission of cost or pricing data may not be  
6 required by reason of paragraph (1)(A) or  
7 (1)(B); and

8 “(B) the modification would not change  
9 the contract or subcontract, as the case may be,  
10 from a contract or subcontract for the acquisition  
11 of a commercial item to a contract or sub-  
12 contract for the acquisition of an item other  
13 than a commercial item.

14 “(c) AUTHORITY TO REQUIRE COST OR PRICING  
15 DATA ON BELOW-THRESHOLD CONTRACTS.—(1) Subject  
16 to paragraph (2), when certified cost or pricing data are  
17 not required to be submitted by subsection (a) for a con-  
18 tract, subcontract, or modification of a contract or sub-  
19 contract, such data may nevertheless be required to be  
20 submitted by the head of the procuring activity, but only  
21 if the head of the procuring activity determines that such  
22 data are necessary for the evaluation by the agency of the  
23 reasonableness of the price of the contract, subcontract,  
24 or modification of a contract or subcontract. In any case  
25 in which the head of the procuring activity requires such

1 data to be submitted under this subsection, the head of  
2 the procuring activity shall justify in writing the reason  
3 for such requirement.

4 “(2) The head of the procuring activity may not re-  
5 quire certified cost or pricing data to be submitted under  
6 this paragraph for any contract or subcontract, or modi-  
7 fication of a contract or subcontract, covered by the excep-  
8 tions in subparagraph (A) or (B) of subsection (b)(1).

9 “(3) The head of a procuring activity may not dele-  
10 gate the functions under this paragraph.

11 “(d) LIMITATIONS ON OTHER INFORMATION.—The  
12 Federal Acquisition Regulation shall include the following:

13 “(1) Provisions concerning the types of infor-  
14 mation that contracting officers may consider in de-  
15 termining whether the price of a procurement to the  
16 Government is fair and reasonable when certified  
17 cost or pricing data are not required to be submitted  
18 under this section, including appropriate information  
19 on the prices at which the same item or similar  
20 items have previously been sold that is adequate for  
21 evaluating the reasonableness of the price of the pro-  
22 posed contract or subcontract for the procurement.

23 “(2) Reasonable limitations on requests for  
24 sales data relating to commercial items.

1           “(3) A requirement that a contracting officer  
2           shall, to the maximum extent practicable, limit the  
3           scope of any request for information relating to com-  
4           mercial items from an offeror to only that informa-  
5           tion that is in the form regularly maintained by the  
6           offeror in commercial operations.

7           “(4) A statement that any information received  
8           relating to commercial items that is exempt from  
9           disclosure under section 552(b) of title 5 shall not  
10          be disclosed by the Federal Government.”.

11          (2) Section 304A of such Act is further amended—

12                 (A) by striking out subsection (h); and

13                 (B) by redesignating subsection (i) as sub-  
14          section (h).

15   **SEC. 202. APPLICATION OF SIMPLIFIED PROCEDURES TO**  
16                         **COMMERCIAL ITEMS.**

17          (a) ARMED SERVICES ACQUISITIONS.—Section  
18   2304(e) of title 10, United States Code, as amended by  
19   section 101(a), is further amended—

20                 (1) in paragraph (1), by inserting after “special  
21          simplified procedures” the following: “for purchases  
22          of commercial items and”; and

23                 (2) by adding at the end the following new  
24          paragraph:

1       “(4) The Federal Acquisition Regulation shall pro-  
2 vide that, in the case of a purchase of commercial items  
3 in an amount greater than the simplified acquisition  
4 threshold, the head of an agency—

5               “(A) may not conduct the purchase on a sole  
6 source basis unless the need to do so is justified in  
7 writing and approved in accordance with the Federal  
8 Acquisition Regulation; and

9               “(B) shall include in the contract file a written  
10 description of the procedures used in awarding the  
11 contract and the number of offers received.”.

12       (b) CIVILIAN AGENCY ACQUISITIONS.—Section  
13 303(e) of the Federal Property and Administrative Serv-  
14 ices Act of 1949 (41 U.S.C. 253), as amended by section  
15 101(b), is further amended—

16               (1) in paragraph (1), by inserting after “special  
17 simplified procedures” the following: “for purchases  
18 of commercial items and”; and

19               (2) by adding at the end the following new  
20 paragraph:

21       “(5) The Federal Acquisition Regulation shall pro-  
22 vide that, in the case of a purchase of commercial items  
23 in an amount greater than the simplified acquisition  
24 threshold, an executive agency—

1           “(A) may not conduct the purchase on a sole  
2           source basis unless the need to do so is justified in  
3           writing and approved in accordance with the Federal  
4           Acquisition Regulation; and

5           “(B) shall include in the contract file a written  
6           description of the procedures used in awarding the  
7           contract and the number of offers received.”.

8           (c) SIMPLIFIED NOTICE.—Section 18 of the Office  
9           of Federal Procurement Policy Act (41 U.S.C. 416) is  
10          amended—

11           (1) in subsection (a)(5) (as redesignated by sec-  
12          tion 101(c))—

13                   (A) by striking out “limited”; and

14                   (B) by inserting before “submission” the  
15           following: “issuance of solicitations and the”;  
16           and

17           (2) in subsection (b)(6), by striking out  
18           “threshold—” and inserting in lieu thereof “thresh-  
19           old, or a contract for the procurement of commercial  
20           items using simplified procedures—”.

21   **SEC. 203. AMENDMENT TO DEFINITION OF COMMERCIAL**  
22                   **ITEMS.**

23           Section 4(12)(F) of the Office of Federal Procure-  
24           ment Policy Act (41 U.S.C. 403(12)(F)) is amended by  
25           striking out “catalog”.



1 **SEC. 204. INAPPLICABILITY OF COST ACCOUNTING STAND-**  
2 **ARDS TO CONTRACTS AND SUBCONTRACTS**  
3 **FOR COMMERCIAL ITEMS.**

4 Subparagraph (B) of section 26(f)(2) of the Office  
5 of Federal Procurement Policy Act (41 U.S.C. 422(f)(2))  
6 is amended—

7 (1) by striking out clause (i) and inserting in  
8 lieu thereof the following:

9 “(i) Contracts or subcontracts for the acquisi-  
10 tion of commercial items.”; and

11 (2) by striking out clause (iii).

12 **TITLE III—ADDITIONAL REFORM**  
13 **PROVISIONS**

14 **SEC. 301. GOVERNMENT RELIANCE ON THE PRIVATE SEC-**  
15 **TOR.**

16 (a) GOVERNMENT RELIANCE ON THE PRIVATE SEC-  
17 TOR.—The Office of Federal Procurement Policy Act (41  
18 U.S.C. 401 et seq.) is amended by inserting after section  
19 16 the following new section:

20 **“SEC. 17. GOVERNMENT RELIANCE ON THE PRIVATE SEC-**  
21 **TOR.**

22 “It is the policy of the Federal Government to rely  
23 on the private sector to supply the products and services  
24 the Federal Government needs.”.

25 (b) CLERICAL AMENDMENT.—The table of contents  
26 for the Office of Federal Procurement Policy Act (con-

1 tained in section 1(b)) is amended by inserting after the  
 2 item relating to section 16 the following new item:

“Sec. 17. Government reliance on the private sector.”.

3 **SEC. 302. ELIMINATION OF CERTAIN CERTIFICATION RE-**  
 4 **QUIREMENTS.**

5 (a) ELIMINATION OF CERTAIN STATUTORY CERTIFI-  
 6 CATION REQUIREMENTS.—(1)(A) Section 2410 of title 10,  
 7 United States Code, is amended—

8 (i) in the heading, by striking out “: **certifi-**  
 9 **cation**”; and

10 (ii) in subsection (a)—

11 (I) in the heading, by striking out “CER-  
 12 TIFICATION”;

13 (II) by striking out “unless” and all that  
 14 follows through “that—” and inserting in lieu  
 15 thereof “unless—”; and

16 (III) in paragraph (2), by striking out “to  
 17 the best of that person’s knowledge and belief”.

18 (B) The item relating to section 2410 in the table  
 19 of sections at the beginning of chapter 141 of such title  
 20 is amended to read as follows:

“Sec. 2410. Requests for equitable adjustment or other relief.”.

21 (2) Section 2410b of title 10, United States Code,  
 22 is amended in paragraph (2) by striking out “certification  
 23 and”.

1       (3) Section 1352(b)(2) of title 31, United States  
2 Code, is amended—

3           (A) by striking out subparagraph (C); and

4           (B) by inserting “and” after the semicolon at  
5 the end of subparagraph (A).

6       (4) Section 5152 of the Drug-Free Workplace Act of  
7 1988 (41 U.S.C. 701) is amended—

8           (A) in subsection (a)(1), by striking out “has  
9 certified to the contracting agency that it will” and  
10 inserting in lieu thereof “agrees to”;

11          (B) in subsection (a)(2), by striking out “con-  
12 tract includes a certification by the individual” and  
13 inserting in lieu thereof “individual agrees”; and

14          (C) in subsection (b)(1)—

15           (i) by striking out subparagraph (A);

16           (ii) by redesignating subparagraph (B) as  
17 subparagraph (A) and in that subparagraph by  
18 striking out “such certification by failing to  
19 carry out”; and

20           (iii) by redesignating subparagraph (C) as  
21 subparagraph (B).

22       (b) ELIMINATION OF CERTAIN REGULATORY CER-  
23 TIFICATION REQUIREMENTS.—

24           (1) CURRENT CERTIFICATION REQUIRE-  
25 MENTS.—(A) Not later than 210 days after the date

1 of the enactment of this Act, any certification re-  
2 quired of contractors or offerors by the Federal Ac-  
3 quisition Regulation that is not specifically imposed  
4 by statute shall be removed by the Administrator for  
5 Federal Procurement Policy from the Federal Acqui-  
6 sition Regulation unless—

7 (i) written justification for such certifi-  
8 cation is provided to the Administrator by the  
9 Federal Acquisition Regulatory Council; and

10 (ii) the Administrator approves in writing  
11 the retention of such certification.

12 (B)(i) Not later than 210 days after the date  
13 of the enactment of this Act, any certification re-  
14 quired of contractors or offerors by a procurement  
15 regulation of an executive agency that is not specifi-  
16 cally imposed by statute shall be removed by the  
17 head of the executive agency from such regulation  
18 unless—

19 (I) written justification for such certifi-  
20 cation is provided to the head of the executive  
21 agency by the senior procurement executive;  
22 and

23 (II) the head of the executive agency ap-  
24 proves in writing the retention of such certifi-  
25 cation.

1           (ii) For purposes of clause (i), the term “head  
2       of the executive agency” with respect to a military  
3       department means the Secretary of Defense.

4           (iii) The Secretary of Defense may delegate his  
5       duties under this subparagraph only to the Under  
6       Secretary of Defense for Acquisition and Tech-  
7       nology.

8           (2) FUTURE CERTIFICATION REQUIREMENTS.—

9       (A) Section 29 of the Office of Federal Procurement  
10      Policy Act (41 U.S.C. 425) is amended—

11           (i) by amending the heading to read as fol-  
12      lows:

13   **“SEC. 29. CONTRACT CLAUSES AND CERTIFICATIONS.”;**

14           (ii) by inserting “(a) NONSTANDARD CON-  
15      TRACT CLAUSES.—” before “The Federal Ac-  
16      quisition”; and

17           (iii) by adding at the end the following new  
18      subsection:

19      “(c) PROHIBITION ON CERTIFICATION REQUIRE-  
20      MENTS.—(1) A requirement for a certification by a con-  
21      tractor or offeror may not be included in the Federal Ac-  
22      quisition Regulation unless—

23           “(A) the certification is specifically imposed by  
24      statute; or

1           “(B) written justification for such certification  
2           is provided to the Administrator for Federal Pro-  
3           curement Policy by the Federal Acquisition Regu-  
4           latory Council, and the Administrator approves in  
5           writing the inclusion of such certification.

6           “(2)(A) A requirement for a certification by a con-  
7           tractor or offeror may not be included in a procurement  
8           regulation of an executive agency unless—

9           “(i) the certification is specifically imposed by  
10          statute; or

11          “(ii) written justification for such certification  
12          is provided to the head of the executive agency by  
13          the senior procurement executive of the agency, and  
14          the head of the executive agency approves in writing  
15          the inclusion of such certification.

16          “(B) For purposes of subparagraph (A), the term  
17          ‘head of the executive agency’ with respect to a military  
18          department means the Secretary of Defense.

19          “(C) The Secretary of Defense may delegate his du-  
20          ties under this paragraph only to the Under Secretary of  
21          Defense for Acquisition and Technology.”.

22                 (B) The item relating to section 29 in the table  
23                 of contents for the Office of Federal Procurement  
24                 Policy Act (contained in section 1(b)) (41 U.S.C.  
25                 401 note) is amended to read as follows:

“Sec. 29. Contract clauses and certifications.”.

1 (c) POLICY OF CONGRESS.—Section 29 of the Office  
2 of Federal Procurement Policy Act (41 U.S.C. 425) is fur-  
3 ther amended by adding after subsection (a) the following  
4 new subsection:

5 “(b) CONSTRUCTION OF CERTIFICATION REQUIRE-  
6 MENTS.—A provision of law may not be construed as re-  
7 quiring a certification by a contractor or offeror in a pro-  
8 curement made or to be made by the Federal Government  
9 unless that provision of law specifically refers to this sub-  
10 section and provides that, notwithstanding this subsection,  
11 such a certification shall be required.”.

12 **SEC. 303. AMENDMENT TO COMMENCEMENT AND EXPIRA-**  
13 **TION OF AUTHORITY TO CONDUCT CERTAIN**  
14 **TESTS OF PROCUREMENT PROCEDURES.**

15 Subsection (j) of section 5061 of the Federal Acquisi-  
16 tion Streamlining Act of 1994 (41 U.S.C. 413 note) is  
17 amended to read as follows:

18 “(j) COMMENCEMENT AND EXPIRATION OF AUTHOR-  
19 ITY.—The authority to conduct a test under subsection  
20 (a) in an agency and to award contracts under such a test  
21 shall take effect on October 1, 1996, and shall expire on  
22 October 1, 2000. Contracts entered into before such au-  
23 thority expires in an agency pursuant to a test shall re-  
24 main in effect, notwithstanding the expiration of the au-  
25 thority to conduct the test under this section.”.

1 **SEC. 304. INTERNATIONAL COMPETITIVENESS.**

2 (a) REPEAL OF PROVISION RELATING TO RESEARCH,  
3 DEVELOPMENT, AND PRODUCTION COSTS.—

4 (1) Subject to paragraph (2), section 21(e) of  
5 the Arms Export Control Act (22 U.S.C. 2761(e)) is  
6 amended—

7 (A) by inserting “and” after the semicolon  
8 at the end of paragraph (1)(A);

9 (B) by striking out subparagraph (B) of  
10 paragraph (1);

11 (C) by redesignating subparagraph (C) of  
12 paragraph (1) as subparagraph (B);

13 (D) by striking out paragraph (2); and

14 (E) by redesignating paragraph (3) as  
15 paragraph (2).

16 (2) Paragraph (1) shall be effective only if—

17 (A) the President, in the budget of the  
18 President for fiscal year 1997, proposes legisla-  
19 tion that if enacted would be qualifying offset-  
20 ting legislation; and

21 (B) there is enacted by October 1, 1996,  
22 qualifying offsetting legislation.

23 (3) If the conditions in paragraph (2) are met,  
24 then the amendments made by paragraph (1) shall  
25 take effect on October 1, 1996.

26 (4) For purposes of this subsection:



1 (A) The term “qualifying offsetting legisla-  
2 tion” means legislation that includes provisions  
3 that—

4 (i) offset fully the estimated revenues  
5 lost as a result of the amendments made  
6 by paragraph (1) for each of the fiscal  
7 years 1997 through 2000;

8 (ii) expressly state that they are en-  
9 acted for the purpose of the offset de-  
10 scribed in clause (i); and

11 (iii) are included in full on the PayGo  
12 scorecard.

13 (B) The term “PayGo scorecard” means  
14 the estimates that are made with respect to fis-  
15 cal years through fiscal year 2000 by the Direc-  
16 tor of the Congressional Budget Office and the  
17 Director of the Office of Management and  
18 Budget under section 252(d) of the Balanced  
19 Budget and Emergency Deficit Control Act of  
20 1985.

21 (b) EFFECTIVE DATES.—The amendments made by  
22 subsection (a) shall be effective with respect to sales agree-  
23 ments pursuant to sections 21 and 22 of the Arms Export  
24 Control Act (22 U.S.C. 2761 and 2762) entered into dur-

1 ing the period beginning on October 1, 1996, and ending  
2 on September 30, 2000.

3 **SEC. 305. PROCUREMENT INTEGRITY.**

4 (a) AMENDMENT OF PROCUREMENT INTEGRITY PRO-  
5 VISION.—Section 27 of the Office of Federal Procurement  
6 Policy Act (41 U.S.C. 423) is amended to read as follows:

7 **“SEC. 27. RESTRICTIONS ON DISCLOSING AND OBTAINING**  
8 **CONTRACTOR BID OR PROPOSAL INFORMA-**  
9 **TION OR SOURCE SELECTION INFORMATION.**

10 “(a) PROHIBITION ON DISCLOSING PROCUREMENT  
11 INFORMATION.—(1) A person described in paragraph (2)  
12 shall not, other than as provided by law, knowingly dis-  
13 close contractor bid or proposal information or source se-  
14 lection information before the award of a Federal agency  
15 procurement contract to which the information relates.

16 “(2) Paragraph (1) applies to any person who—

17 “(A) is a present or former officer or employee  
18 of the United States, or a person who is acting or  
19 has acted for or on behalf of, or who is advising or  
20 has advised the United States with respect to, a  
21 Federal agency procurement; and

22 “(B) by virtue of that office, employment, or re-  
23 lationship has or had access to contractor bid or pro-  
24 posal information or source selection information.

1       “(b) PROHIBITION ON OBTAINING PROCUREMENT  
2 INFORMATION.—A person shall not, other than as pro-  
3 vided by law, knowingly obtain contractor bid or proposal  
4 information or source selection information before the  
5 award of a Federal agency procurement contract to which  
6 the information relates.

7       “(c) PROHIBITION ON DISCLOSING OR OBTAINING  
8 PROCUREMENT INFORMATION IN CONNECTION WITH A  
9 PROTEST.—(1) A person shall not, other than as provided  
10 by law, knowingly violate the terms of a protective order  
11 described in paragraph (2) by disclosing or obtaining con-  
12 tractor bid or proposal information or source selection in-  
13 formation related to the procurement contract concerned.

14       “(2) Paragraph (1) applies to any protective order  
15 issued by the Defense Board or the Civilian Board in con-  
16 nection with a protest against the award or proposed  
17 award of a Federal agency procurement contract.

18       “(d) PENALTIES AND ADMINISTRATIVE ACTIONS.—

19               “(1) CRIMINAL PENALTIES.—

20                       “(A) Whoever engages in conduct con-  
21 stituting an offense under subsection (a), (b),  
22 or (c) shall be imprisoned for not more than  
23 one year or fined as provided under title 18,  
24 United States Code, or both.

1           “(B) Whoever engages in conduct con-  
2           stituting an offense under subsection (a), (b),  
3           or (c) for the purpose of either—

4                   “(i) exchanging the information cov-  
5                   ered by such subsection for anything of  
6                   value, or

7                   “(ii) obtaining or giving anyone a  
8                   competitive advantage in the award of a  
9                   Federal agency procurement contract,  
10           shall be imprisoned for not more than 15 years  
11           or fined as provided under title 18, United  
12           States Code, or both.

13           “(2) CIVIL PENALTIES.—The Attorney General  
14           may bring a civil action in the appropriate United  
15           States district court against any person who engages  
16           in conduct constituting an offense under subsection  
17           (a), (b), or (c). Upon proof of such conduct by a  
18           preponderance of the evidence, the person is subject  
19           to a civil penalty. An individual who engages in such  
20           conduct is subject to a civil penalty of not more than  
21           \$50,000 for each violation plus twice the amount of  
22           compensation which the individual received or of-  
23           fered for the prohibited conduct. An organization  
24           that engages in such conduct is subject to a civil  
25           penalty of not more than \$500,000 for each violation

1 plus twice the amount of compensation which the or-  
2 ganization received or offered for the prohibited con-  
3 duct.

4 “(3) ADMINISTRATIVE ACTIONS.—(A) If a Fed-  
5 eral agency receives information that a contractor or  
6 a person has engaged in conduct constituting an of-  
7 fense under subsection (a), (b), or (c), the Federal  
8 agency shall consider taking one or more of the fol-  
9 lowing actions, as appropriate:

10 “(i) Cancellation of the Federal agency  
11 procurement, if a contract has not yet been  
12 awarded.

13 “(ii) Rescission of a contract with respect  
14 to which—

15 “(I) the contractor or someone acting  
16 for the contractor has been convicted for  
17 an offense under subsection (a), (b), or (c),  
18 or

19 “(II) the head of the agency that  
20 awarded the contract has determined,  
21 based upon a preponderance of the evi-  
22 dence, that the contractor or someone act-  
23 ing for the contractor has engaged in con-  
24 duct constituting such an offense.

1           “(iii) Initiation of suspension or debarment  
2           proceedings for the protection of the Govern-  
3           ment in accordance with procedures in the Fed-  
4           eral Acquisition Regulation.

5           “(iv) Initiation of adverse personnel action,  
6           pursuant to the procedures in chapter 75 of  
7           title 5, United States Code, or other applicable  
8           law or regulation.

9           “(B) If a Federal agency rescinds a contract  
10          pursuant to subparagraph (A)(ii), the United States  
11          is entitled to recover, in addition to any penalty pre-  
12          scribed by law, the amount expended under the con-  
13          tract.

14          “(C) For purposes of any suspension or debar-  
15          ment proceedings initiated pursuant to subpara-  
16          graph (A)(iii), engaging in conduct constituting an  
17          offense under subsection (a), (b), or (c) affects the  
18          present responsibility of a Government contractor or  
19          subcontractor.

20          “(e) DEFINITIONS.—As used in this section:

21               “(1) The term ‘contractor bid or proposal infor-  
22               mation’ means any of the following information sub-  
23               mitted to a Federal agency as part of or in connec-  
24               tion with a bid or proposal to enter into a Federal  
25               agency procurement contract, if that information has

1 not been previously made available to the public or  
2 disclosed publicly:

3 “(A) Cost or pricing data (as defined by  
4 section 2306a(h) of title 10, United States  
5 Code, with respect to procurements subject to  
6 that section, and section 304A(h) of Federal  
7 Property and Administrative Services Act of  
8 1949 (41 U.S.C. 254b(h), with respect to pro-  
9 curements subject to that section).

10 “(B) Indirect costs and direct labor rates.

11 “(C) Proprietary information about manu-  
12 facturing processes, operations, or techniques  
13 marked by the contractor in accordance with  
14 applicable law or regulation.

15 “(D) Information marked by the contrac-  
16 tor as ‘contractor bid or proposal information’,  
17 in accordance with applicable law or regulation.

18 “(2) The term ‘source selection information’  
19 means any of the following information prepared for  
20 use by a Federal agency for the purpose of evaluat-  
21 ing a bid or proposal to enter into a Federal agency  
22 procurement contract, if that information has not  
23 been previously made available to the public or dis-  
24 closed publicly:

1           “(A) Bid prices submitted in response to a  
2           Federal agency solicitation for sealed bids, or  
3           lists of those bid prices before public bid open-  
4           ing.

5           “(B) Proposed costs or prices submitted in  
6           response to a Federal agency solicitation, or  
7           lists of those proposed costs or prices.

8           “(C) Source selection plans.

9           “(D) Technical evaluation plans.

10          “(E) Technical evaluations of proposals.

11          “(F) Cost or price evaluations of propos-  
12          als.

13          “(G) Competitive range determinations  
14          that identify proposals that have a reasonable  
15          chance of being selected for award of a con-  
16          tract.

17          “(H) Rankings of bids, proposals, or com-  
18          petitors.

19          “(I) The reports and evaluations of source  
20          selection panels, boards, or advisory councils.

21          “(J) Other information marked as ‘source  
22          selection information’ based on a case-by-case  
23          determination by the head of the agency, his  
24          designee, or the contracting officer that its dis-  
25          closure would jeopardize the integrity or suc-



1           successful completion of the Federal agency pro-  
2           curement to which the information relates.

3           “(3) The term ‘Federal agency’ has the mean-  
4           ing provided such term in section 3 of the Federal  
5           Property and Administrative Services Act of 1949  
6           (40 U.S.C. 472).

7           “(4) The term ‘Federal agency procurement’  
8           means the acquisition (by using competitive proce-  
9           dures and awarding a contract) of goods or services  
10          (including construction) from non-Federal sources  
11          by a Federal agency using appropriated funds.

12          “(5) The term ‘contracting officer’ means a  
13          person who, by appointment in accordance with ap-  
14          plicable regulations, has the authority to enter into  
15          a Federal agency procurement contract on behalf of  
16          the Government and to make determinations and  
17          findings with respect to such a contract.

18          “(6) The term ‘protest’ means a written objec-  
19          tion by an interested party to the award or proposed  
20          award of a Federal agency procurement contract,  
21          pursuant to title IV of the Federal Acquisition Re-  
22          form Act of 1995.

23          “(f) LIMITATION ON PROTESTS.—No person may file  
24          a protest against the award or proposed award of a Fed-  
25          eral agency procurement contract alleging an offense

1 under subsection (a), (b), or (c), of this section, nor may  
2 the Defense Board or the Civilian Board consider such  
3 an allegation in deciding a protest, unless that person re-  
4 ported to the Federal agency responsible for the procure-  
5 ment information that the person believed constituted evi-  
6 dence of the offense no later than 14 days after the person  
7 first discovered the possible offense.

8 “(g) SAVINGS PROVISIONS.—This section does not—

9 “(1) restrict the disclosure of information to, or  
10 its receipt by, any person or class of persons author-  
11 ized, in accordance with applicable agency regula-  
12 tions or procedures, to receive that information;

13 “(2) restrict a contractor from disclosing its  
14 own bid or proposal information or the recipient  
15 from receiving that information;

16 “(3) restrict the disclosure or receipt of infor-  
17 mation relating to a Federal agency procurement  
18 after it has been canceled by the Federal agency be-  
19 fore contract award unless the Federal agency plans  
20 to resume the procurement;

21 “(4) prohibit individual meetings between a  
22 Federal agency employee and an offeror or potential  
23 offeror for, or a recipient of, a contract or sub-  
24 contract under a Federal agency procurement, pro-  
25 vided that unauthorized disclosure or receipt of con-

1 tractor bid or proposal information or source selec-  
2 tion information does not occur;

3 “(5) authorize the withholding of information  
4 from, nor restrict its receipt by, Congress, a commit-  
5 tee or subcommittee of Congress, the Comptroller  
6 General, a Federal agency, or an inspector general  
7 of a Federal agency;

8 “(6) authorize the withholding of information  
9 from, nor restrict its receipt by, the Defense Board  
10 or the Civilian Board in the course of a protest  
11 against the award or proposed award of a Federal  
12 agency procurement contract; or

13 “(7) limit the applicability of any requirements,  
14 sanctions, contract penalties, and remedies estab-  
15 lished under any other law or regulation.”.

16 (b) REPEALS.—The following provisions of law are  
17 repealed:

18 (1) Sections 2397, 2397a, 2397b, and 2397c of  
19 title 10, United States Code.

20 (2) Section 33 of the Federal Energy Adminis-  
21 tration Act of 1974 (15 U.S.C. 789).

22 (3) Section 281 of title 18, United States Code.

23 (4) Subsection (c) of section 32 of the Office of  
24 Federal Procurement Policy Act (41 U.S.C. 428).

1           (5) The first section 19 of the Federal Non-  
2       nuclear Energy Research and Development Act of  
3       1974 (42 U.S.C. 5918).

4       (c) CLERICAL AMENDMENTS.—

5           (1) The table of sections at the beginning of  
6       chapter 141 of title 10, United States Code, is  
7       amended by striking out the items relating to sec-  
8       tions 2397, 2397a, 2397b, and 2397c.

9           (2) The table of sections at the beginning of  
10      chapter 15 of title 18, United States Code, is  
11      amended by striking out the item relating to section  
12      281.

13          (3) Section 32 of the Office of Federal Procure-  
14      ment Policy Act (41 U.S.C. 428) is amended by re-  
15      designating subsections (d), (e), (f), and (g) as sub-  
16      sections (c), (d), (e), and (f), respectively.

17   **SEC. 306. FURTHER ACQUISITION STREAMLINING PROVI-**  
18                                   **SIONS.**

19          (a) PURPOSE OF OFFICE OF FEDERAL PROCURE-  
20      MENT POLICY.—(1) Section 5(a) of the Office of Federal  
21      Procurement Policy Act (41 U.S.C. 404) is amended to  
22      read as follows:

23          “(a) To promote economy, efficiency, and effective-  
24      ness in the procurement of property and services by the  
25      executive branch of the Federal Government, there shall

1 be an Office of Federal Procurement Policy (hereinafter  
2 referred to as the ‘Office’) in the Office of Management  
3 and Budget to provide overall direction of Government-  
4 wide procurement policies, regulations, procedures, and  
5 forms for executive agencies.”.

6 (2) Sections 2 and 3 of such Act (41 U.S.C. 401 and  
7 402) are repealed.

8 (b) REPEAL OF REPORT REQUIREMENT.—Section 8  
9 of the Office of Federal Procurement Policy Act (41  
10 U.S.C. 407) is repealed.

11 (c) REPEAL OF OBSOLETE PROVISIONS.—(1) Sec-  
12 tions 10 and 11 of the Office of Federal Procurement Pol-  
13 icy Act (41 U.S.C. 409 and 410) are repealed.

14 (d) CLERICAL AMENDMENTS.—The table of contents  
15 for the Office of Federal Procurement Policy Act (con-  
16 tained in section 1(b)) is amended by striking out the  
17 items relating to sections 2, 3, 8, 10, and 11.

18 (e) REPEAL OF DATA COLLECTION REQUIRE-  
19 MENT.—Subsection (h) of section 111 of the Federal  
20 Property and Administrative Services Act of 1949 (40  
21 U.S.C. 759) is repealed.

22 **SEC. 307. JUSTIFICATION OF MAJOR DEFENSE ACQUISI-**  
23 **TION PROGRAMS NOT MEETING GOALS.**

24 Section 2220(b) of title 10, United States Code, is  
25 amended by adding at the end the following: “In addition,

1 the Secretary shall include in such annual report a justification for the continuation of any program that—

3 “(1) is more than 50 percent over the cost goal  
4 established for the development, procurement, or  
5 operational phase of the program;

6 “(2) fails to achieve at least 50 percent of the  
7 performance capability goals established for the development, procurement, or operational phase of the  
8 program; or  
9

10 “(3) is more than 50 percent behind schedule,  
11 as determined in accordance with the schedule goal  
12 established for the development, procurement, or  
13 operational phase of the program.”.

14 **SEC. 308. ENHANCED PERFORMANCE INCENTIVES FOR AC-**  
15 **QUISITION WORKFORCE.**

16 (a) ARMED SERVICES ACQUISITIONS.—Subsection  
17 (b) of section 5001 of the Federal Acquisition Streamlin-  
18 ing Act of 1994 (Public Law 103–355; 108 Stat. 3350;  
19 10 U.S.C. 2220 note) is amended—

20 (1) by redesignating paragraphs (1) and (2) as  
21 subparagraphs (A) and (B), respectively;

22 (2) by designating the second sentence as para-  
23 graph (2);

24 (3) by inserting “(1)” after “(b) ENHANCED  
25 SYSTEM OF PERFORMANCE INCENTIVES.—”; and

1 (4) by adding at the end the following:

2 “(3) The Secretary shall include in the enhanced sys-  
3 tem of incentives the following:

4 “(A) Pay bands.

5 “(B) Significant and material pay and pro-  
6 motion incentives to be awarded, and significant and  
7 material unfavorable personnel actions to be im-  
8 posed, under the system exclusively, or primarily, on  
9 the basis of the contributions of personnel to the  
10 performance of the acquisition program in relation  
11 to cost goals, performance goals, and schedule goals.

12 “(C) Provisions for pay incentives and pro-  
13 motion incentives to be awarded under the system.”.

14 (b) CIVILIAN AGENCY ACQUISITIONS.—Subsection  
15 (c) of section 5051 of the Federal Acquisition Streamlin-  
16 ing Act of 1994 (Public Law 103–355; 108 Stat. 3351;  
17 41 U.S.C. 263 note) is amended—

18 (1) by redesignating subparagraphs (A) and  
19 (B) of paragraph (2) as clauses (i) and (ii), respec-  
20 tively;

21 (2) by redesignating paragraphs (1) and (2) as  
22 subparagraphs (A) and (B), respectively;

23 (3) by inserting “(1)” after “(c) ENHANCED  
24 SYSTEM OF PERFORMANCE INCENTIVES.—”; and

25 (4) by adding at the end the following:

1       “(2) The Deputy Director shall include in the en-  
2 hanced system of incentives under paragraph (1)(B) the  
3 following:

4               “(A) Pay bands.

5               “(B) Significant and material pay and pro-  
6 motion incentives to be awarded, and significant and  
7 material unfavorable personnel actions to be im-  
8 posed, under the system exclusively, or primarily, on  
9 the basis of the contributions of personnel to the  
10 performance of the acquisition program in relation  
11 to cost goals, performance goals, and schedule goals.

12               “(C) Provisions for pay incentives and pro-  
13 motion incentives to be awarded under the system.”.

14 **SEC. 309. RESULTS ORIENTED ACQUISITION PROGRAM**  
15 **CYCLE.**

16       Section 5002(a) of the Federal Acquisition Stream-  
17 lining Act of 1994 (Public Law 103–355; 108 Stat. 3350)  
18 is amended—

19               (1) by inserting “(1)” before “to ensure”; and

20               (2) by striking out the period at the end and  
21 inserting in lieu thereof the following: “; (2) to en-  
22 sure that the regulations compress the time periods  
23 associated with developing, procuring, and making  
24 operational new systems; and (3) to ensure that De-  
25 partment of Defense directives relating to develop-



1       ment and procurement of information systems (num-  
2       bered in the 8000 series) and the Department of De-  
3       fense directives numbered in the 5000 series are  
4       consolidated into one series of directives that is con-  
5       sistent with such compressed time periods.”.

6       **SEC. 310. RAPID CONTRACTING GOAL.**

7       (a) GOAL.—The Office of Federal Procurement Pol-  
8       icy Act, as amended by section 106, is further amended  
9       by adding at the end the following new section:

10      **“SEC. 36. RAPID CONTRACTING GOAL.**

11       “The Administrator for Federal Procurement Policy  
12      shall establish a goal of reducing by 50 percent the time  
13      necessary for executive agencies to acquire an item for the  
14      user of that item.”.

15       (b) CLERICAL AMENDMENT.—The table of contents  
16      for such Act, contained in section 1(b), is amended by add-  
17      ing at the end the following new item:

      “Sec. 36. Rapid contracting goal.”.

18      **SEC. 311. ENCOURAGEMENT OF MULTIYEAR CONTRACTING.**

19       (a) ARMED SERVICES ACQUISITIONS.—Section  
20      2306b(a) of title 10, United States Code, is amended in  
21      the matter preceding paragraph (1) by striking out “may”  
22      and inserting in lieu thereof “shall, to the maximum ex-  
23      tent possible,”.

24       (b) CIVILIAN AGENCY ACQUISITIONS.—Section  
25      304B(a) of the Federal Property and Administrative Serv-

ices Act of 1949 (41 U.S.C. 254c(a)) is amended in the matter preceding paragraph (1) by striking out “may” and inserting in lieu thereof “shall, to the maximum extent possible,”.

**SEC. 312. CONTRACTOR SHARE OF GAINS AND LOSSES FROM COST, SCHEDULE, AND PERFORMANCE EXPERIENCE.**

(a) ARMED SERVICES ACQUISITIONS.—(1) Chapter 137 of title 10, United States Code, is amended by inserting after section 2306b the following new section:

**“§ 2306c. Contractor share of gains and losses from cost, schedule, and performance experience**

“The Federal Acquisition Regulation shall contain provisions to ensure that, for any cost-type contract or incentive-type contract, the contractor may be rewarded for contract performance exceeding the contract cost, schedule, or performance parameters to the benefit of the United States and may be penalized for failing to adhere to cost, schedule, or performance parameters to the detriment of the United States.”.

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2306b the following new item:

“2306c. Contractor share of gains and losses from cost, schedule, and performance experience.”.

1 (b) CIVILIAN AGENCY ACQUISITIONS.—(1) Title III  
2 of the Federal Property and Administrative Services Act  
3 of 1949 (41 U.S.C. 251 et seq.) is amended by inserting  
4 after section 304C the following new section:

5 **“SEC. 304D. CONTRACTOR SHARE OF GAINS AND LOSSES**  
6 **FROM COST, SCHEDULE, AND PERFORMANCE**  
7 **EXPERIENCE.**

8 “The Federal Acquisition Regulation shall contain  
9 provisions to ensure that, for any cost-type contract or in-  
10 centive-type contract, the contractor may be rewarded for  
11 contract performance exceeding the contract cost, sched-  
12 ule, or performance parameters to the benefit of the Unit-  
13 ed States and may be penalized for failing to adhere to  
14 cost, schedule, or performance parameters to the det-  
15 riment of the United States.”.

16 (2) The table of contents for such Act, contained in  
17 section 1(b), is amended by inserting after the item relat-  
18 ing to section 304C the following new item:

“Sec. 304D. Contractor share of gains and losses from cost, schedule, and per-  
formance experience.”.

19 **SEC. 313. PHASE FUNDING OF DEFENSE ACQUISITION PRO-**  
20 **GRAMS.**

21 Chapter 131 of title 10, United States Code, is  
22 amended by adding at the end the following new section:

1 **“§ 2221. Funding for results oriented acquisition pro-**  
2 **gram cycle**

3 “Before initial funding is made available for the de-  
4 velopment, procurement, or operational phase of an acqui-  
5 sition program for which an authorization of appropria-  
6 tions is required by section 114 of this title, the Secretary  
7 of Defense shall submit to Congress information about the  
8 objectives and plans for the conduct of that phase and the  
9 funding requirements for the entire phase. The informa-  
10 tion shall identify the intended user of the system to be  
11 acquired under the program and shall include objective,  
12 quantifiable criteria for assessing the extent to which the  
13 objectives and goals determined pursuant to section 2435  
14 of this title are achieved.”.

15 (2) The table of sections at the beginning of such  
16 chapter is amended by adding at the end the following  
17 new item:

“2221. Funding for results oriented acquisition program cycle.”.

18 **SEC. 314. IMPROVED DEPARTMENT OF DEFENSE CON-**  
19 **TRACT PAYMENT PROCEDURES.**

20 (a) REVIEW AND IMPROVEMENT OF PROCEDURES.—  
21 The Comptroller General of the United States shall review  
22 commercial practices regarding accounts payable and, con-  
23 sidering the results of the review, develop standards for  
24 the Secretary of Defense to consider using for improving

1 the contract payment procedures and financial manage-  
2 ment systems of the Department of Defense.

3 (b) GAO REPORT.—Not later than September 30,  
4 1996, the Comptroller General shall submit to Congress  
5 a report containing the following matters:

6 (1) The weaknesses in the financial manage-  
7 ment processes of the Department of Defense.

8 (2) Deviations of the Department of Defense  
9 payment procedures and financial management sys-  
10 tems from the standards developed pursuant to sub-  
11 section (a), expressed quantitatively.

12 (3) The officials of the Department of Defense  
13 who are responsible for resolving the deviations.

14 **SEC. 315. CONSIDERATION OF PAST PERFORMANCE IN AS-**  
15 **SIGNMENT TO ACQUISITION POSITIONS.**

16 (a) REQUIREMENT.—Section 1701(a) of title 10,  
17 United States Code, is amended by adding at the end the  
18 following: “The policies and procedures shall provide that  
19 education and training in acquisition matters, and past  
20 performance of acquisition responsibilities, are major fac-  
21 tors in the selection of personnel for assignment to acqui-  
22 sition positions in the Department of Defense.”.

23 (b) PERFORMANCE REQUIREMENTS FOR ASSIGN-  
24 MENT.—(1) Section 1723(a) of title 10, United States  
25 Code, is amended by inserting “, including requirements

1 relating to demonstrated past performance of acquisition  
2 duties,” in the first sentence after “experience require-  
3 ments”.

4 (2) Section 1724(a)(2) of such title is amended by  
5 inserting before the semicolon at the end the following:  
6 “and have demonstrated proficiency in the performance of  
7 acquisition duties in the contracting position or positions  
8 previously held”.

9 (3) Section 1735 of such title is amended—

10 (A) in subsection (b)—

11 (i) by striking out “and” at the end of  
12 paragraph (2);

13 (ii) by striking out the period at the end  
14 of paragraph (3) and inserting in lieu thereof “;  
15 and”; and

16 (iii) by adding at the end the following:

17 “(4) must have demonstrated proficiency in the  
18 performance of acquisition duties.”;

19 (B) in subsection (c)—

20 (i) by striking out “and” at the end of  
21 paragraph (2);

22 (ii) by striking out the period at the end  
23 of paragraph (3) and inserting in lieu thereof “;  
24 and”; and

25 (iii) by adding at the end the following:

1           “(4) must have demonstrated proficiency in the  
2           performance of acquisition duties.”;

3           (C) in subsection (d), by inserting before the  
4           period at the end the following: “, and have dem-  
5           onstrated proficiency in the performance of acqui-  
6           sition duties”; and

7           (D) in subsection (e), by inserting before the  
8           period at the end the following: “, and have dem-  
9           onstrated proficiency in the performance of acqui-  
10          sition duties”.

11 **SEC. 316. ADDITIONAL DEPARTMENT OF DEFENSE PILOT**  
12 **PROGRAMS.**

13           (a) **AUTHORITY TO CONDUCT DEFENSE FACILITY-**  
14 **WIDE PILOT PROGRAM.**—The Secretary of Defense may  
15 conduct a pilot program, to be known as the “defense fa-  
16 cility-wide pilot program”, for the purpose of determining  
17 the potential for increasing the efficiency and effectiveness  
18 of the acquisition process in facilities.

19           (b) **SCOPE OF PROGRAM.**—At a facility designated as  
20 a participant in the pilot program, the pilot program shall  
21 consist of the following:

22           (1) All contracts and subcontracts for defense  
23 supplies and services that are performed at the facil-  
24 ity.

1           (2) All contracts and subcontracts performed  
2       elsewhere that the Secretary determines are directly  
3       and substantially related to the production of de-  
4       fense supplies and services at the facility and are  
5       necessary for the pilot program.

6       (c) DESIGNATION OF PARTICIPATING FACILITIES.—

7       (1) The Secretary may designate up to two facilities as  
8       participants in the defense facility-wide pilot program.

9       (2) Subject to subsection (g), the Secretary may de-  
10      termine the scope and duration of a designation made  
11      under this paragraph.

12      (d) CRITERIA FOR DESIGNATION.—(1) Not later  
13      than 90 days after the date of the enactment of this Act,  
14      the Secretary shall provide to the congressional defense  
15      committees a detailed description of the proposed criteria  
16      to be used in selecting facilities for designation as partici-  
17      pants in the defense facility-wide pilot program. The Sec-  
18      retary may not select any facilities for participation in the  
19      program until at least 30 days have passed after providing  
20      such criteria.

21      (2) After selecting both facilities for designation as  
22      participants in the program, the Secretary shall notify the  
23      congressional defense committees of the selection and sub-  
24      mit a description—



1           (A) of the management goals and objectives in-  
2           tended to be achieved for each facility selected; and

3           (B) of the method by which the Secretary in-  
4           tends to monitor and measure the performance of  
5           the selected facilities in meeting such management  
6           goals and objectives.

7           (3)(A) In developing the criteria referred to para-  
8           graph (1), the Secretary shall ensure that such criteria  
9           reflect the following objectives:

10           (i) A significant reduction of the cost to the  
11           Government for programs carried out at the des-  
12           ignated facilities.

13           (ii) A reduction of the schedule associated with  
14           programs carried out at the designated facilities.

15           (iii) An increased used of commercial practices  
16           and procedures for programs carried at the des-  
17           ignated facilities.

18           (iv) That the designation of a facility under  
19           subsection (c) does not place a competing domestic  
20           manufacturer at a significant competitive disadvan-  
21           tage.

22           (B) The criteria shall also require that, with respect  
23           to any facility designated under subsection (c), all or sub-  
24           stantially all of the contracts to be awarded and performed  
25           at the facility after the designation, and all or substan-

1 tially all of the subcontracts to be awarded under those  
2 contracts and performed at the facility after the designa-  
3 tion, will be—

4 (i) for the production of supplies or services on  
5 a firm-fixed price basis;

6 (ii) awarded without requiring the contractors  
7 or subcontractors to provide certified cost or pricing  
8 data pursuant to section 2306a of title 10, United  
9 States Code; and

10 (iii) awarded and administered without the ap-  
11 plication of cost accounting standards under section  
12 26(f) of the Office of Federal Procurement Policy  
13 Act (41 U.S.C. 422(f)).

14 (e) EXEMPTION FROM CERTAIN REQUIREMENTS.—  
15 In the case of a contract or subcontract that is to be per-  
16 formed at a facility designated for participation in the de-  
17 fense facility-wide pilot program and that is subject to sec-  
18 tion 2306a of title 10, United States Code, or section 26(f)  
19 of the Office of Federal Procurement Policy Act (41  
20 U.S.C. 422(f)), the Secretary of Defense may exempt such  
21 contract or subcontract from the requirement to obtain  
22 certified cost or pricing data under such section 2306a or  
23 the requirement to apply mandatory cost accounting  
24 standards under such section 26(f) if the Secretary deter-  
25 mines that the contract or subcontract—

1           (1) is within the scope of the pilot program (as  
2       described in subsection (b)); and

3           (2) is fairly and reasonably priced based on in-  
4       formation other than certified cost and pricing data.

5       (f) SPECIAL AUTHORITY.—The authority provided  
6       under subsection (a) may include authority for the Sec-  
7       retary of Defense—

8           (1) to apply any amendment or repeal of a pro-  
9       vision of law made in this Act to the pilot program  
10      before the effective date of such amendment or re-  
11      peal; and

12          (2) to apply to a procurement of items other  
13      than commercial items under such program—

14           (A) any authority provided in the Federal  
15      Acquisition Streamlining Act of 1994 (Public  
16      Law 103–355) (or in an amendment made by  
17      a provision of that Act) to waive a provision of  
18      law in the case of commercial items, and

19           (B) any exception applicable under this  
20      Act or the Federal Acquisition Streamlining Act  
21      of 1994 (Public Law 103–355) (or an amend-  
22      ment made by a provision of either Act) in the  
23      case of commercial items,

24      before the effective date of such provision (or  
25      amendment) to the extent that the Secretary deter-

1 mines necessary to test the application of such waiv-  
2 er or exception to procurements of items other than  
3 commercial items.

4 (g) APPLICABILITY.—(1) Subsections (e) and (f)  
5 apply with respect to—

6 (A) a contract that is awarded or modified dur-  
7 ing the period described in paragraph (2); and

8 (B) a contract that is awarded before the begin-  
9 ning of such period and is to be performed (or may  
10 be performed), in whole or in part, during such pe-  
11 riod.

12 (2) The period referred to in paragraph (1) is the  
13 period that begins 45 days after the date of the enactment  
14 of this Act and ends on September 30, 1998.

15 (h) COMMERCIAL PRACTICES ENCOURAGED.—With  
16 respect to contracts and subcontracts within the scope of  
17 the defense facility-wide pilot program, the Secretary of  
18 Defense may, to the extent the Secretary determines ap-  
19 propriate and in accordance with the law, adopt commer-  
20 cial practices in the administration of contracts and sub-  
21 contracts. Such commercial practices may include elimi-  
22 nation of Government audit and access to records provi-  
23 sions; incorporation of commercial oversight, inspection,  
24 and acceptance procedures; use of alternative dispute reso-  
25 lution techniques (including arbitration); and elimination

1 of contract provisions authorizing the Government to  
2 make unilateral changes to contracts.

3 **SEC. 317. VALUE ENGINEERING FOR FEDERAL AGENCIES.**

4 (a) USE OF VALUE ENGINEERING.—The Office of  
5 Federal Procurement Policy Act (41 U.S.C. 401 et seq.),  
6 as amended by section 310, is further amended by adding  
7 at the end the following new section:

8 **“SEC. 37. VALUE ENGINEERING.**

9 “(a) IN GENERAL.—Each executive agency shall es-  
10 tablish and maintain effective value engineering proce-  
11 dures and processes.

12 “(b) THRESHOLD.—The procedures and processes  
13 established pursuant to subsection (a) shall be applied to  
14 those programs, projects, systems, and products of an ex-  
15 ecutive agency that, in a ranking of all programs, projects,  
16 systems, and products of the agency according to greatest  
17 dollar value, are within the highest 20th percentile.

18 “(c) DEFINITION.—As used in this section, the term  
19 ‘value engineering’ means a team effort, performed by  
20 qualified agency or contractor personnel, directed at ana-  
21 lyzing the functions of a program, project, system, prod-  
22 uct, item of equipment, building, facility, service, or supply  
23 for the purpose of achieving the essential functions at the  
24 lowest life-cycle cost that is consistent with required or  
25 improved performance, reliability, quality, and safety.”.

1 (b) CLERICAL AMENDMENT.—The table of contents  
2 for such Act, contained in section 1(b), is amended by add-  
3 ing at the end the following new item:

“Sec. 37. Value engineering.”.

4 **SEC. 318. ACQUISITION WORKFORCE.**

5 (a) ACQUISITION WORKFORCE.—(1) The Office of  
6 Federal Procurement Policy Act (41 U.S.C. 401 et seq.),  
7 as amended by section 317, is further amended by adding  
8 at the end the following new section:

9 **“SEC. 38. ACQUISITION WORKFORCE.**

10 “(a) APPLICABILITY.—This section does not apply to  
11 an executive agency that is subject to chapter 87 of title  
12 10, United States Code.

13 “(b) MANAGEMENT POLICIES.—

14 “(1) POLICIES AND PROCEDURES.—The head  
15 of each executive agency, after consultation with the  
16 Administrator for Federal Procurement Policy, shall  
17 establish policies and procedures for the effective  
18 management (including accession, education, train-  
19 ing, career development, and performance incentives)  
20 of the acquisition workforce of the agency. The de-  
21 velopment of acquisition workforce policies under  
22 this section shall be carried out consistent with the  
23 merit system principles set forth in paragraphs (1)  
24 and (2) of section 2301(b) of title 5, United States  
25 Code.

1           “(2) UNIFORM IMPLEMENTATION.—The head  
2 of each executive agency shall ensure that, to the  
3 maximum extent practicable, acquisition workforce  
4 policies and procedures established are uniform in  
5 their implementation throughout the agency.

6           “(3) GOVERNMENT-WIDE POLICIES AND EVAL-  
7 UATION.—The Administrator shall issue policies to  
8 promote uniform implementation of this section by  
9 executive agencies, with due regard for differences in  
10 program requirements among agencies that may be  
11 appropriate and warranted in view of the agency  
12 mission. The Administrator shall coordinate with the  
13 Deputy Director for Management of the Office of  
14 Management and Budget to ensure that such poli-  
15 cies are consistent with the policies and procedures  
16 established and enhanced system of incentives pro-  
17 vided pursuant to section 5051(c) of the Federal Ac-  
18 quisition Streamlining Act of 1994 (41 U.S.C. 263  
19 note). The Administrator shall evaluate the imple-  
20 mentation of the provisions of this section by execu-  
21 tive agencies.

22           “(c) SENIOR PROCUREMENT EXECUTIVE AUTHORI-  
23 TIES AND RESPONSIBILITIES.—Subject to the authority,  
24 direction, and control of the head of an executive agency,  
25 the senior procurement executive of the agency shall carry

1 out all powers, functions, and duties of the head of the  
2 agency with respect to implementation of this section. The  
3 senior procurement executive shall ensure that the policies  
4 of the head of the executive agency established in accord-  
5 ance with this section are implemented throughout the  
6 agency.

7 “(d) MANAGEMENT INFORMATION SYSTEMS.—The  
8 Administrator shall ensure that the heads of executive  
9 agencies collect and maintain standardized information on  
10 the acquisition workforce related to implementation of this  
11 section. To the maximum extent practicable, such data re-  
12 quirements shall conform to standards established by the  
13 Office of Personnel Management for the Central Personnel  
14 Data File.

15 “(e) ACQUISITION WORKFORCE.—The programs es-  
16 tablished by this section shall apply to all employees in  
17 the General Schedule Contracting series (GS-1102) and  
18 the General Schedule Purchasing series (GS-1105), and  
19 to any employees regardless of series who have been ap-  
20 pointed as contracting officers whose authority exceeds the  
21 micro-purchase threshold, as that term is defined in sec-  
22 tion 32(g). The head of each executive agency may include  
23 employees in other series who perform acquisition or ac-  
24 quisition-related functions.

25 “(f) CAREER DEVELOPMENT.—



1           “(1) CAREER PATHS.—The head of each execu-  
2           tive agency shall ensure that appropriate career  
3           paths for personnel who desire to pursue careers in  
4           acquisition are identified in terms of the education,  
5           training, experience, and assignments necessary for  
6           career progression to the most senior acquisition po-  
7           sitions. The head of each executive agency shall  
8           make information available on such career paths.

9           “(2) CRITICAL DUTIES AND TASKS.—For each  
10          career path, the head of each executive agency shall  
11          identify the critical acquisition-related duties and  
12          tasks in which, at minimum, employees of the agen-  
13          cy in the career path shall be competent to perform  
14          at full performance grade levels. For this purpose,  
15          the head of the executive agency shall provide appro-  
16          priate coverage of the critical duties and tasks iden-  
17          tified by the Director of the Federal Acquisition In-  
18          stitute.

19          “(3) MANDATORY TRAINING AND EDU-  
20          CATION.—For each career path, the head of each ex-  
21          ecutive agency shall establish requirements for the  
22          completion of course work and related on-the-job  
23          training in the critical acquisition-related duties and  
24          tasks of the career path. The head of each executive  
25          agency shall also encourage employees to maintain

1 the currency of their acquisition knowledge and gen-  
2 erally enhance their knowledge of related acquisition  
3 management disciplines through academic programs  
4 and other self-developmental activities.

5 “(4) PERFORMANCE INCENTIVES.—The head of  
6 each executive agency, acting through the senior  
7 procurement executive for the agency, shall provide  
8 for an enhanced system of incentives for the encour-  
9 agement of excellence in the acquisition workforce  
10 which rewards performance of employees that con-  
11 tribute to achieving the agency’s performance goals.  
12 The system of incentives shall include provisions  
13 that—

14 “(A) relate pay to performance;

15 “(B) provide for consideration, in person-  
16 nel evaluations and promotion decisions, of the  
17 extent to which the performance of personnel  
18 contributed to achieving the agency’s perform-  
19 ance goals; and

20 “(C) provide pay and promotion incentives  
21 to be awarded, and unfavorable personnel ac-  
22 tions to be imposed, under the system on the  
23 basis of the contributions of personnel to  
24 achieving the agency’s performance goals.

25 “(g) QUALIFICATION REQUIREMENTS.—

1           “(1) GENERAL SCHEDULE CONTRACTING SE-  
2       RIES (GS-1102).—

3           “(A) ENTRY LEVEL QUALIFICATIONS.—

4       The Director of the Office of Personnel Man-  
5       agement shall require that, after October 1,  
6       1996, a person may not be appointed to a posi-  
7       tion in the GS-1102 occupational series unless  
8       the person—

9           “(i) has received a baccalaureate de-  
10       gree from an accredited educational insti-  
11       tution authorized to grant baccalaureate  
12       degrees,

13          “(ii) has completed at least 24 semes-  
14       ter credit hours (or the equivalent) of  
15       study from an accredited institution of  
16       higher education in any of the following  
17       disciplines: accounting, business finance,  
18       law, contracts, purchasing, economics, in-  
19       dustrial management, marketing, quan-  
20       titative methods, or organization and man-  
21       agement, or

22          “(iii) has passed a written test deter-  
23       mined by the Administrator for Federal  
24       Procurement Policy, after consultation  
25       with the Director of the Office of Person-

1           nel Management, to demonstrate the  
2           judgmental skills necessary for positions in  
3           this series.

4           “(B) QUALIFICATIONS FOR SENIOR CON-  
5           TRACTING POSITIONS.—The Director of the Of-  
6           fice of Personnel Management shall require  
7           that, after October 1, 1996, persons may be ap-  
8           pointed to positions at and above full perform-  
9           ance grade levels in the GS–1102 occupational  
10          series only if those persons—

11               “(i) have satisfied the educational re-  
12               quirement either of subparagraph (A)(i) or  
13               (A)(ii),

14               “(ii) have successfully completed all  
15               training required for the position under  
16               subsection (f)(3), and

17               “(iii) have satisfied experience and  
18               other requirements established by the Di-  
19               rector for such positions.

20          However, this requirement shall apply to per-  
21          sons employed on October 1, 1996, in GS–1102  
22          positions at those grade levels only as a pre-  
23          requisite for promotion to a GS–1102 position  
24          at a higher grade.

1           “(2) GENERAL SCHEDULE PURCHASING SERIES  
2           (GS-1105).—The Director of the Office of Personnel  
3           Management shall require that, after October 1,  
4           1996, a person may not be appointed to a position  
5           in the GS-1105 occupational series unless the per-  
6           son—

7                   “(A) has successfully completed 2 years of  
8                   course work from an accredited educational in-  
9                   stitution authorized to grant degrees, or

10                   “(B) has passed a written test determined  
11                   by the Administrator for Federal Procurement  
12                   Policy, after consultation with the Director of  
13                   the Office of Personnel Management, to dem-  
14                   onstrate the judgmental skills necessary for po-  
15                   sitions in this series.

16           “(3) CONTRACTING OFFICERS.—The head of  
17           each executive agency shall require that, beginning  
18           after October 1, 1996, a person may be appointed  
19           as a contracting officer with authority to award or  
20           administer contracts for amounts above the micro-  
21           purchase threshold, as that term is defined in sec-  
22           tion 32(g), only if the person—

23                   “(A) has successfully completed all manda-  
24                   tory training required of an employee in an

1           equivalent GS-1102 or 1105 position under  
2           subsection (f)(3); and

3           “(B) meets experience and other require-  
4           ments established by the head of the agency,  
5           based on the dollar value and complexity of the  
6           contracts that the employee will be authorized  
7           to award or administer under the appointment  
8           as a contracting officer.

9           “(4) EXCEPTIONS.—(A) The requirements set  
10          forth in paragraphs (1) and (2), as applicable, shall  
11          not apply to any person employed in the GS-1102  
12          or GS-1105 series on October 1, 1996.

13          “(B) Employees of an executive agency who do  
14          not satisfy the full qualification requirements for ap-  
15          pointment as a contracting officer under paragraph  
16          (3) may be appointed as a contracting officer for a  
17          temporary period of time under procedures estab-  
18          lished by the agency head. The procedures shall—

19                 “(i) require that the person have completed  
20                 a significant portion of the required training,

21                 “(ii) require a plan be established for the  
22                 balance of the required training,

23                 “(iii) specify a period of time for comple-  
24                 tion of the training, and

1           “(iv) include provisions for withdrawing or  
2           terminating the appointment prior to the sched-  
3           uled expiration date, where appropriate.

4           “(5) WAIVER.—The senior procurement execu-  
5           tive for an executive agency may waive any or all of  
6           the qualification requirements of paragraphs (1) and  
7           (2) for a person if the person possesses significant  
8           potential for advancement to levels of greater re-  
9           sponsibility and authority, based on demonstrated  
10          job performance and qualifying experience. This au-  
11          thority may not be redelegated by the senior pro-  
12          curement executive. With respect to each waiver  
13          granted under this subsection, the senior procure-  
14          ment executive shall set forth in writing the ration-  
15          ale for the decision to waive such requirements.

16          “(h) PROGRAM ESTABLISHMENT AND IMPLEMENTA-  
17          TION.—

18               “(1) FUNDING LEVELS.—(A) The head of an  
19               executive agency shall request in the budget for a  
20               fiscal year for the agency—

21                   “(i) for education and training under this  
22                   section, an amount equal to no less than 2.5  
23                   percent of the base aggregate salary cost of the  
24                   acquisition workforce subject to this section for  
25                   that fiscal year; and

1           “(ii) for salaries of the acquisition  
2           workforce, an amount equal to no more than  
3           97.5 percent of such base aggregate salary cost.

4           “(B) The head of the executive agency shall set  
5           forth separately the funding levels requested in the  
6           budget justification documents submitted in support  
7           of the President’s budget submitted to Congress  
8           under section 1105 of title 31, United States Code.

9           “(C) Funds appropriated for education and  
10          training under this section may not be obligated or  
11          used for any other purpose.

12          “(2) INTERAGENCY AGREEMENTS.—The head  
13          of an executive agency may enter into a written  
14          agreement with another agency to participate in pro-  
15          grams established under this section on a reimburs-  
16          able basis.

17          “(3) TUITION ASSISTANCE.—Notwithstanding  
18          the prohibition in section 4107(b) of title 5, United  
19          States Code, the head of each executive agency may  
20          provide for tuition reimbursement and education (in-  
21          cluding a full-time course of study leading to a de-  
22          gree) for acquisition personnel in the agency related  
23          to the purposes of this section.

24          “(4) INTERN PROGRAMS.—The head of each ex-  
25          ecutive agency may establish intern programs in



1 order to recruit highly qualified and talented individ-  
2 uals and provide them with opportunities for acceler-  
3 ated promotions, career broadening assignments,  
4 and specified training for advancement to senior ac-  
5 quisition positions. For such programs, the head of  
6 an executive agency, without regard to the provisions  
7 of title 5, United States Code, may appoint individ-  
8 uals to competitive GS-5, GS-7, or GS-9 positions  
9 in the General Schedule Contracting series (GS-  
10 1102) who have graduated from baccalaureate or  
11 master's programs in purchasing or contracting  
12 from accredited educational institutions authorized  
13 to grant baccalaureate and master's degrees.

14 “(5) COOPERATIVE EDUCATION PROGRAM.—  
15 The head of each executive agency may establish an  
16 agencywide cooperative education credit program for  
17 acquisition positions. Under the program, the head  
18 of the executive agency may enter into cooperative  
19 arrangements with one or more accredited institu-  
20 tions of higher education which provide for such in-  
21 stitutions to grant undergraduate credit for work  
22 performed in such position.

23 “(6) SCHOLARSHIP PROGRAM.—

24 “(A) ESTABLISHMENT.—Where deemed  
25 appropriate, the head of each executive agency

1           may establish a scholarship program for the  
2           purpose of qualifying individuals for acquisition  
3           positions in the agency.

4           “(B) ELIGIBILITY.—To be eligible to par-  
5           ticipate in a scholarship program established  
6           under this paragraph by an executive agency,  
7           an individual must—

8                   “(i) be accepted for enrollment or be  
9                   currently enrolled as a full-time student at  
10                  an accredited educational institution au-  
11                  thorized to grant baccalaureate or grad-  
12                  uate degrees (as appropriate);

13                  “(ii) be pursuing a course of edu-  
14                  cation that leads toward completion of a  
15                  bachelor’s, master’s, or doctor’s degree (as  
16                  appropriate) in a qualifying field of study,  
17                  as determined by the head of the agency;

18                  “(iii) sign an agreement described in  
19                  subparagraph (C) under which the partici-  
20                  pant agrees to serve a period of obligated  
21                  service in the agency in an acquisition po-  
22                  sition in return for payment of educational  
23                  assistance as provided in the agreement;  
24                  and

1                   “(iv) meet such other requirements as  
2                   the head of the agency prescribes.

3                   “(C) AGREEMENT.—An agreement be-  
4                   tween the head of an executive agency and a  
5                   participant in a scholarship program established  
6                   under this paragraph shall be in writing, shall  
7                   be signed by the participant, and shall include  
8                   the following provisions:

9                   “(i) The agreement of the head of the  
10                  agency to provide the participant with edu-  
11                  cational assistance for a specified number  
12                  of school years, not to exceed 4, during  
13                  which the participant is pursuing a course  
14                  of education in a qualifying field of study.  
15                  The assistance may include payment of  
16                  tuition, fees, books, laboratory expenses,  
17                  and a stipend.

18                  “(ii) The participant’s agreement—

19                          “(I) to accept such educational  
20                          assistance,

21                          “(II) to maintain enrollment and  
22                          attendance in the course of education  
23                          until completed,

24                          “(III) while enrolled in such  
25                          course, to maintain an acceptable level

1 of academic standing (as prescribed  
2 by the head of the agency), and

3 “(IV) after completion of the  
4 course of education, to serve as a full-  
5 time employee in an acquisition posi-  
6 tion in the agency for a period of time  
7 of one calendar year for each school  
8 year or part thereof for which the par-  
9 ticipant was provided a scholarship  
10 under the program.

11 “(D) REPAYMENT.—(i) Any person partici-  
12 pating in a program established under this  
13 paragraph shall agree to pay to the United  
14 States the total amount of educational assist-  
15 ance provided to the person under the program  
16 if the person is voluntarily separated from the  
17 agency or involuntarily separated for cause  
18 from the agency before the end of the period for  
19 which the person has agreed to continue in the  
20 service of the agency in an acquisition position.

21 “(ii) If an employee fails to fulfill the  
22 agreement to pay to the Government the total  
23 amount of educational assistance provided to  
24 the person under the program, a sum equal to  
25 the amount of the educational assistance may

1 be recovered by the Government from the em-  
2 ployee (or the estate of the employee) by setoff  
3 against accrued pay, compensation, amount of  
4 retirement credit, or other amount due the em-  
5 ployee from the Government; and by such other  
6 method as is provided by law for the recovery  
7 of amounts owing to the Government.

8 “(iii) The head of an executive agency may  
9 waive in whole or in part a repayment required  
10 under this paragraph if the head of the agency  
11 determines the recovery would be against equity  
12 and good conscience or would be contrary to the  
13 best interests of the United States.

14 “(E) TERMINATION OF AGREEMENT.—  
15 There shall be no requirement that a position  
16 be offered to a person after such person suc-  
17 cessfully completes a course of education re-  
18 quired by an agreement under this paragraph.  
19 If no position is offered, the agreement shall be  
20 considered terminated.”.

21 (2) The table of contents for such Act, contained in  
22 section 1(b), is amended by adding at the end the follow-  
23 ing new item:

“Sec. 38. Acquisition workforce.”.

1 (b) ADDITIONAL AMENDMENTS.—Section 6(d)(5) of  
2 the Office of Federal Procurement Policy Act (41 U.S.C.  
3 405), is amended—

4 (1) in subparagraph (A), by striking out “Gov-  
5 ernment-wide career management programs for a  
6 professional procurement work force” and inserting  
7 in lieu thereof “the development of a professional ac-  
8 quisition workforce Government-wide”;

9 (2) in subparagraph (B)—

10 (A) by striking out “procurement by the”  
11 and inserting in lieu thereof “acquisition by  
12 the”; and

13 (B) by striking out “and” at the end of  
14 the subparagraph; and

15 (3) by striking out subparagraph (C) and in-  
16 serting in lieu thereof the following:

17 “(C) administer the provisions of section  
18 38;

19 “(D) collect data and analyze acquisition  
20 workforce data from the Office of Personnel  
21 Management, the heads of executive agencies,  
22 and, through periodic surveys, from individual  
23 employees;

24 “(E) periodically analyze acquisition career  
25 fields to identify critical competencies, duties,

1 tasks, and related academic prerequisites, skills,  
2 and knowledge;

3 “(F) coordinate and assist agencies in  
4 identifying and recruiting highly qualified can-  
5 didates for acquisition fields;

6 “(G) develop instructional materials for ac-  
7 quisition personnel in coordination with private  
8 and public acquisition colleges and training fa-  
9 cilities;

10 “(H) evaluate the effectiveness of training  
11 and career development programs for acqui-  
12 sition personnel;

13 “(I) promote the establishment and utiliza-  
14 tion of academic programs by colleges and uni-  
15 versities in acquisition fields;

16 “(J) facilitate, to the extent requested by  
17 agencies, interagency intern and training pro-  
18 grams; and

19 “(K) perform other career management or  
20 research functions as directed by the Adminis-  
21 trator.”.

1 **SEC. 319. DEMONSTRATION PROJECT RELATING TO CER-**  
2 **TAIN PERSONNEL MANAGEMENT POLICIES**  
3 **AND PROCEDURES.**

4 (a) COMMENCEMENT.—The Secretary of Defense is  
5 encouraged to take such steps as may be necessary to pro-  
6 vide for the commencement of a demonstration project,  
7 the purpose of which would be to determine the feasibility  
8 or desirability of one or more proposals for improving the  
9 personnel management policies or procedures that apply  
10 with respect to the acquisition workforce of the Depart-  
11 ment of Defense.

12 (b) TERMS AND CONDITIONS.—

13 (1) IN GENERAL.—Except as otherwise pro-  
14 vided in this subsection, any demonstration project  
15 described in subsection (a) shall be subject to section  
16 4703 of title 5, United States Code, and all other  
17 provisions of such title that apply with respect to  
18 any demonstration project under such section.

19 (2) EXCEPTIONS.—Subject to paragraph (3), in  
20 applying section 4703 of title 5, United States Code,  
21 with respect to a demonstration project described in  
22 subsection (a)—

23 (A) “180 days” in subsection (b)(4) of  
24 such section shall be deemed to read “120  
25 days”;



1 (B) “90 days” in subsection (b)(6) of such  
2 section shall be deemed to read “30 days”; and

3 (C) subsection (d)(1)(A) of such section  
4 shall be disregarded.

5 (3) CONDITION.—Paragraph (2) shall not apply  
6 with respect to a demonstration project unless it—

7 (A) involves only the acquisition workforce  
8 of the Department of Defense (or any part  
9 thereof); and

10 (B) commences during the 3-year period  
11 beginning on the date of the enactment of this  
12 Act.

13 (c) DEFINITION.—For purposes of this section, the  
14 term “acquisition workforce” refers to the persons serving  
15 in acquisition positions within the Department of Defense,  
16 as designated pursuant to section 1721(a) of title 10,  
17 United States Code.

18 **SEC. 320. COOPERATIVE PURCHASING.**

19 (a) DELAY IN OPENING CERTAIN FEDERAL SUPPLY  
20 SCHEDULES TO USE BY STATE, LOCAL, AND INDIAN  
21 TRIBAL GOVERNMENTS.—The Administrator of General  
22 Services may not use the authority of section 201(b)(2)  
23 of the Federal Property and Administrative Services Act  
24 of 1949 (40 U.S.C. 481(b)(2)) to provide for the use of

1 Federal supply schedules of the General Services Adminis-  
2 tration until after the later of—

3 (1) the date on which the 14-month period be-  
4 ginning on the date of the enactment of this Act ex-  
5 pires; or

6 (2) the date on which all of the following condi-  
7 tions are met:

8 (A) The Administrator has considered the  
9 report of the Comptroller General required by  
10 subsection (b).

11 (B) The Administrator has submitted com-  
12 ments on such report to the congressional com-  
13 mittees as required by subsection (c).

14 (C) A period of 30 days after the date of  
15 submission of such comments to the congres-  
16 sional committees referred to in subsection (d)  
17 has expired.

18 (b) REPORT.—Not later than one year after the date  
19 of the enactment of this Act, the Comptroller General shall  
20 submit to the Administrator of General Services and to  
21 the congressional committees referred to in subsection (d)  
22 a report on the implementation of section 201(b) of the  
23 Federal Property and Administrative Services Act of  
24 1949. The report shall include the following:

1           (1) An assessment of the effect on industry, in-  
2           cluding small businesses and local dealers, of provid-  
3           ing for the use of Federal supply schedules by the  
4           entities described in section 201(b)(2)(A) of the  
5           Federal Property and Administrative Services Act of  
6           1949.

7           (2) An assessment of the effect on such entities  
8           of providing for the use of Federal supply schedules  
9           by them.

10          (c) COMMENTS ON REPORT BY ADMINISTRATOR.—  
11       Not later than 30 days after receiving the report of the  
12       Comptroller General required by subsection (b), the Ad-  
13       ministrator of General Services shall submit to the con-  
14       gressional committees referred to in subsection (d) com-  
15       ments on the report, including the Administrator's com-  
16       ments on whether the Administrator plans to provide any  
17       Federal supply schedule for the use of any entity described  
18       in section 201(b)(2)(A) of the Federal Property and Ad-  
19       ministrative Services Act of 1949.

20          (d) CONGRESSIONAL COMMITTEES.—The report re-  
21       quired by subsection (b) and the comments required by  
22       subsection (c) shall be submitted to the Governmental Af-  
23       fairs Committee of the Senate and the Committee on Gov-  
24       ernment Reform and Oversight of the House of Represent-  
25       atives.

1 (e) CALCULATION OF 30-DAY PERIOD.—For pur-  
 2 poses of subsection (a)(2)(C), the calculation of the 30-  
 3 day period shall exclude Saturdays, Sundays, and holi-  
 4 days, and any day on which neither House of Congress  
 5 is in session because of an adjournment sine die, a recess  
 6 of more than 3 days, or an adjournment of more than  
 7 3 days.

8 **TITLE IV—STREAMLINING OF**  
 9 **DISPUTE RESOLUTION**  
 10 **Subtitle A—General Provisions**

11 **SEC. 401. DEFINITIONS.**

12 (a) IN GENERAL.—The Office of Federal Procure-  
 13 ment Policy Act (41 U.S.C. 401 et seq.) is amended by  
 14 adding at the end the following:

15 **“TITLE II—DISPUTE**  
 16 **RESOLUTION**  
 17 **“Subtitle A—General Provisions**

18 **“SEC. 201. DEFINITIONS.**

19 “In this title:

20 “(1) The term ‘Defense Board’ means the De-  
 21 partment of Defense Board of Contract Appeals es-  
 22 tablished pursuant to section 8(a) of the Contract  
 23 Disputes Act of 1978 (41 U.S.C. 607).

24 “(2) The term ‘Civilian Board’ means the Civil-  
 25 ian Board of Contract Appeals established pursuant

1 to section 8(b) of the Contract Disputes Act of 1978  
2 (41 U.S.C. 607).

3 “(3) The term ‘Board judge’ means a member  
4 of the Defense Board or the Civilian Board, as the  
5 case may be.

6 “(4) The term ‘Chairman’ means the Chairman  
7 of the Defense Board or the Civilian Board, as the  
8 case may be.

9 “(5) The term ‘Board concerned’ means—

10 “(A) the Defense Board with respect to  
11 matters within its jurisdiction; and

12 “(B) the Civilian Board with respect to  
13 matters within its jurisdiction.

14 “(6) The term ‘executive agency’—

15 “(A) with respect to contract disputes and  
16 protests under the jurisdiction of the Defense  
17 Board, means the Department of Defense, the  
18 Department of the Army, the Department of  
19 the Navy, or the Department of the Air Force;  
20 and

21 “(B) with respect to contract disputes and  
22 protests under the jurisdiction of the Civilian  
23 Board, has the meaning given by section 4(1)  
24 of this Act except that the term does not in-  
25 clude the Department of Defense, the Depart-

1           ment of the Army, the Department of the Navy,  
2           and the Department of the Air Force.

3           “(7) The term ‘alternative means of dispute  
4           resolution’ has the meaning given by section 571(3)  
5           of title 5, United States Code.

6           “(8) The term ‘protest’ means a written objec-  
7           tion by an interested party to any of the following:

8                 “(A) A solicitation or other request by an  
9                 executive agency for offers for a contract for  
10                the procurement of property or services.

11               “(B) The cancellation of such a solicitation  
12               or other request.

13               “(C) An award or proposed award of such  
14               a contract.

15           “(9) The term ‘interested party’, with respect  
16           to a contract or a solicitation or other request for of-  
17           fers, means an actual or prospective bidder or  
18           offeror whose direct economic interest would be af-  
19           fected by the award of the contract or by failure to  
20           award the contract.

21           “(10) The term ‘prevailing party’, with respect  
22           to a determination of the Board under section  
23           214(h)(2) that a decision of the head of an executive  
24           agency is arbitrary or capricious or violates a statute  
25           or regulation, means a party that showed that the

1 decision was arbitrary or capricious or violated a  
2 statute or regulation.”.

3 (b) CONFORMING AMENDMENTS.—The Office of  
4 Federal Procurement Policy Act (41 U.S.C. 401 et seq.)  
5 is further amended—

6 (1) by inserting the following before section 1:

7 **“TITLE I—FEDERAL PROCURE-**  
8 **MENT POLICY GENERALLY”;**

9 and

10 (2) in section 4, by striking out “As used in  
11 this Act:” and inserting in lieu thereof “Except as  
12 otherwise specifically provided, as used in this Act:”.

13 **Subtitle B—Establishment of Civil-**  
14 **ian and Defense Boards of Con-**  
15 **tract Appeals**

16 **SEC. 411. ESTABLISHMENT.**

17 Subsections (a) and (b) of section 8 of the Contract  
18 Disputes Act of 1978 (41 U.S.C. 607) are amended to  
19 read as follows:

20 “(a) There is established in the Department of De-  
21 fense a board of contract appeals to be known as the De-  
22 partment of Defense Board of Contract Appeals.

23 “(b) There is established in the General Services Ad-  
24 ministration a board of contract appeals to be known as  
25 the Civilian Board of Contract Appeals.”.

1 **SEC. 412. MEMBERSHIP.**

2 The Office of Federal Procurement Policy Act (41  
3 U.S.C. 401 et seq.), as amended by section 401, is further  
4 amended by adding at the end the following:

5 **“SEC. 202. MEMBERSHIP.**

6 “(a) APPOINTMENT.—(1)(A) The Defense Board  
7 shall consist of judges appointed by the Secretary of De-  
8 fense from a register of applicants maintained by the De-  
9 fense Board, in accordance with rules issued by the De-  
10 fense Board for establishing and maintaining a register  
11 of eligible applicants and selecting Defense Board judges.  
12 The Secretary shall appoint a judge without regard to po-  
13 litical affiliation and solely on the basis of the professional  
14 qualifications required to perform the duties and respon-  
15 sibilities of a Defense Board judge.

16 “(B) The Civilian Board shall consist of judges ap-  
17 pointed by the Administrator of General Services from a  
18 register of applicants maintained by the Civilian Board,  
19 in accordance with rules issued by the Civilian Board for  
20 establishing and maintaining a register of eligible appli-  
21 cants and selecting Civilian Board judges. The Adminis-  
22 trator shall appoint a judge without regard to political af-  
23 filiation and solely on the basis of the professional quali-  
24 fications required to perform the duties and responsibil-  
25 ities of a Civilian Board judge.



1       “(2) The members of the Defense Board and the Ci-  
2 vilian Board shall be selected and appointed to serve in  
3 the same manner as administrative law judges appointed  
4 pursuant to section 3105 of title 5, United States Code,  
5 with an additional requirement that such members shall  
6 have had not fewer than five years of experience in public  
7 contract law.

8       “(3) Notwithstanding paragraph (2) and subject to  
9 subsection (b), the following persons shall serve as Board  
10 judges:

11           “(A) For the Defense Board, any full-time  
12 member of the Armed Services Board of Contract  
13 Appeals serving as such on the day before the effec-  
14 tive date of this title.

15           “(B) For the Civilian Board, any full-time  
16 member of any agency board of contract appeals  
17 other than the Armed Services Board of Contract  
18 Appeals serving as such on the day before the effec-  
19 tive date of this title.

20           “(C) For either the Defense Board or the Civil-  
21 ian Board, any person serving on the day before the  
22 effective date of this title in a position at a level of  
23 assistant general counsel or higher with authority  
24 delegated from the Comptroller General to decide

1 bid protests under subchapter V of chapter 35 of  
2 title 31, United States Code.

3 “(b) REMOVAL.—Members of the Defense Board and  
4 the Civilian Board shall be subject to removal in the same  
5 manner as administrative law judges, as provided in sec-  
6 tion 7521 of title 5, United States Code.

7 “(c) COMPENSATION.—Compensation for the Chair-  
8 man of the Defense Board and the Chairman of the Civil-  
9 ian Board and all other members of each Board shall be  
10 determined under section 5372a of title 5, United States  
11 Code.”.

12 **SEC. 413. CHAIRMAN.**

13 The Office of Federal Procurement Policy Act (41  
14 U.S.C. 401 et seq.), as amended by section 412, is further  
15 amended by adding at the end the following:

16 **“SEC. 203. CHAIRMAN.**

17 “(a) DESIGNATION.—(1)(A) The Chairman of the  
18 Defense Board shall be designated by the Secretary of De-  
19 fense to serve for a term of five years. The Secretary shall  
20 select the Chairman from among sitting judges each of  
21 whom has had at least five years of service—

22 “(i) as a member of the Armed Services Board  
23 of Contract Appeals; or

24 “(ii) in a position at a level of assistant general  
25 counsel or higher with authority delegated from the

1 Comptroller General to decide bid protests under  
2 subchapter V of chapter 35 of title 31, United  
3 States Code (as in effect on the day before the effective date of this title).

5 “(B) The Chairman of the Civilian Board shall be  
6 designated by the Administrator of General Services to  
7 serve for a term of five years. The Administrator shall select the Chairman from among sitting judges each of  
8 whom has had at least five years of service—

10 “(i) as a member of an agency board of contract appeals other than the Armed Services Board  
11 of Contract Appeals; or

13 “(ii) in a position at a level of assistant general  
14 counsel or higher with authority delegated from the  
15 Comptroller General to decide bid protests under  
16 subchapter V of chapter 35 of title 31, United  
17 States Code (as in effect on the day before the effective date of this title).

19 “(2) A Chairman of a Board may continue to serve  
20 after the expiration of the Chairman’s term until a successor has taken office. A Chairman may be reappointed any  
21 number of times.

23 “(b) RESPONSIBILITIES.—The Chairman of the Defense Board or the Civilian Board, as the case may be,  
24 shall be responsible on behalf of the Board for the execu-

1 tive and administrative operation of the Board, including  
2 functions of the Board with respect to the following:

3           “(1) The selection, appointment, and fixing of  
4 the compensation of such personnel, pursuant to  
5 part III of title 5, United States Code, as the Chair-  
6 man considers necessary or appropriate, including a  
7 Clerk of the Board, a General Counsel, and clerical  
8 and legal assistance for Board judges.

9           “(2) The supervision of personnel employed by  
10 or assigned to the Board, and the distribution of  
11 work among such personnel.

12           “(3) The operation of an Office of the Clerk of  
13 the Board, including the receipt of all filings made  
14 with the Board, the assignment of cases, and the  
15 maintenance of all records of the Board.

16           “(4) The prescription of such rules and regula-  
17 tions as the Chairman considers necessary or appro-  
18 priate for the administration and management of the  
19 Board.

20           “(c) VICE CHAIRMEN.—The Chairman of the De-  
21 fense Board or the Civilian Board, as the case may be,  
22 may designate up to four other Board judges as Vice  
23 Chairmen. The Chairman may divide the Board into two  
24 divisions, one for handling contract disputes and one for  
25 handling protests, and, if such division is made, shall as-

1 sign a Vice Chairman to head each division. The Vice  
2 Chairmen, in the order designated by the Chairman, shall  
3 act in the place and stead of the Chairman during the  
4 absence of the Chairman.”.

5 **SEC. 414. RULEMAKING AUTHORITY.**

6 The Office of Federal Procurement Policy Act (41  
7 U.S.C. 401 et seq.), as amended by section 413, is further  
8 amended by adding at the end the following:

9 **“SEC. 204. RULEMAKING AUTHORITY.**

10 “(a) IN GENERAL.—Except as provided by section  
11 452 of the Federal Acquisition Reform Act of 1995, the  
12 Chairman of the Defense Board and the Chairman of the  
13 Civilian Board shall jointly issue and maintain—

14 “(1) such procedural rules and regulations as  
15 are necessary to the exercise of the functions of the  
16 Boards under sections 213 and 214; and

17 “(2) statements of policy of general applicabil-  
18 ity with respect to such functions.

19 “(b) BOARD PROCEDURES.—In issuing procedural  
20 rules and regulations for the exercise of the Boards’ pro-  
21 test function under section 214, the Chairmen shall take  
22 due notice of executive agency procedures for the resolu-  
23 tion of protests as a discretionary alternative to resolution  
24 of protests by the Boards and shall ensure that the rules  
25 and regulations governing the time for filing protests with

1 the Boards make appropriate allowance for the use of such  
2 executive agency procedures by interested parties.”.

3 **SEC. 415. AUTHORIZATION OF APPROPRIATIONS.**

4 The Office of Federal Procurement Policy Act (41  
5 U.S.C. 401 et seq.), as amended by section 414, is further  
6 amended by adding at the end the following:

7 **“SEC. 205. AUTHORIZATION OF APPROPRIATIONS.**

8 “There are authorized to be appropriated for fiscal  
9 year 1997 and each succeeding fiscal year such sums as  
10 may be necessary to carry out the provisions of this title.  
11 Funds for the activities of each Board shall be separately  
12 appropriated for such purpose. Funds appropriate pursu-  
13 ant to this section shall remain available until expended.”.

14 **Subtitle C—Functions of Defense**  
15 **and Civilian Boards of Contract**  
16 **Appeals**

17 **SEC. 421. ALTERNATIVE DISPUTE RESOLUTION SERVICES.**

18 The Office of Federal Procurement Policy Act (41  
19 U.S.C. 401 et seq.), as amended by section 415, is further  
20 amended by adding at the end the following:

1 **“Subtitle B—Functions of the De-**  
2 **fense and Civilian Boards of**  
3 **Contract Appeals**

4 **“SEC. 211. ALTERNATIVE DISPUTE RESOLUTION SERVICES.**

5       “(a) REQUIREMENT TO PROVIDE SERVICES UPON  
6 REQUEST.—The Defense Board and the Civilian Board  
7 shall each provide alternative means of dispute resolution  
8 for any disagreement regarding a contract or prospective  
9 contract of an executive agency upon the request of all  
10 parties to the disagreement.

11       “(b) PERSONNEL QUALIFIED TO ACT.—Each Board  
12 judge and each attorney employed by the Board concerned  
13 shall be considered to be qualified to act for the purpose  
14 of conducting alternative means of dispute resolution  
15 under this section.

16       “(c) SERVICES TO BE PROVIDED WITHOUT  
17 CHARGE.—Any services provided by the Board concerned  
18 or any Board judge or employee pursuant to this section  
19 shall be provided without charge.

20       “(d) RECUSAL OF CERTAIN PERSONNEL UPON RE-  
21 QUEST.—In the event that a matter which is presented  
22 to the Board concerned for alternative means of dispute  
23 resolution, pursuant to this section, later becomes the sub-  
24 ject of formal proceedings before such Board, any Board  
25 judge or employee who was involved in the alternative

1 means of dispute resolution shall, if requested by any  
2 party to the formal proceeding, take no part in that pro-  
3 ceeding.”.

4 **SEC. 422. ALTERNATIVE DISPUTE RESOLUTION OF DIS-**  
5 **PUTES AND PROTESTS SUBMITTED TO**  
6 **BOARDS.**

7 The Office of Federal Procurement Policy Act (41  
8 U.S.C. 401 et seq.), as amended by section 421, is further  
9 amended by adding at the end the following:

10 **“SEC. 212. ALTERNATIVE DISPUTE RESOLUTION OF DIS-**  
11 **PUTES AND PROTESTS SUBMITTED TO**  
12 **BOARDS.**

13 “With reasonable promptness after the submission to  
14 the Defense Board or the Civilian Board of a contract dis-  
15 pute under section 213 or a bid protest under section 214,  
16 a Board judge to whom the contract dispute or protest  
17 is assigned shall request the parties to meet with a Board  
18 judge, or an attorney employed by the Board concerned,  
19 for the purpose of attempting to resolve the dispute or  
20 protest through alternative means of dispute resolution.  
21 Formal proceedings in the appeal shall then be suspended  
22 until such time as any party or a Board judge to whom  
23 the dispute or protest is assigned determines that alter-  
24 native means of dispute resolution are not appropriate for  
25 resolution of the dispute or protest.”.



1   **SEC. 423. CONTRACT DISPUTES.**

2       The Office of Federal Procurement Policy Act (41  
3 U.S.C. 401 et seq.), as amended by section 422, is further  
4 amended by adding at the end the following:

5   **“SEC. 213. CONTRACT DISPUTES.**

6       “The Defense Board shall have jurisdiction as pro-  
7 vided by section 8(a) of the Contract Disputes Act of 1978  
8 (41 U.S.C. 601–613). The Civilian Board shall have juris-  
9 diction as provided by section 8(b) of such Act.”.

10   **SEC. 424. PROTESTS.**

11       The Office of Federal Procurement Policy Act (41  
12 U.S.C. 401 et seq.), as amended by section 423, is further  
13 amended by adding at the end the following:

14   **“SEC. 214. PROTESTS.**

15       “(a) REVIEW REQUIRED UPON REQUEST.—Upon re-  
16 quest of an interested party in connection with any pro-  
17 curement conducted by an executive agency, the Defense  
18 Board or the Civilian Board, as the case may be, shall  
19 review, as provided in this section, any decision by the  
20 head of the executive agency alleged to be arbitrary or ca-  
21 pricious or to violate a statute or regulation. A decision  
22 or order of the Board concerned pursuant to this section  
23 shall not be subject to interlocutory appeal or review.

24       “(b) STANDARD OF REVIEW.—In deciding a protest,  
25 the Board concerned may consider all evidence that is rel-  
26 evant to the decision under protest. The protester may

1 prevail only by showing that the decision was arbitrary  
2 or capricious or violated a statute or regulation.

3 “(c) NOTIFICATION.—Within one day after the re-  
4 ceipt of a protest, the Board concerned shall notify the  
5 executive agency involved of the protest.

6 “(d) SUSPENSION OF CONTRACT AWARD.—(1) Ex-  
7 cept as provided in paragraph (2) of this subsection, a  
8 contract may not be awarded in any procurement after  
9 the executive agency has received notice of a protest with  
10 respect to such procurement from the Board concerned  
11 and while the protest is pending.

12 “(2) The head of the procuring activity responsible  
13 for award of a contract may authorize the award of the  
14 contract (notwithstanding a protest of which the executive  
15 agency has notice under this section)—

16 “(A) upon a written finding that urgent and  
17 compelling circumstances which significantly affect  
18 interests of the United States will not permit wait-  
19 ing for the decision of the Board concerned under  
20 this section; and

21 “(B) after the Board concerned is advised of  
22 that finding.

23 “(3) A finding may not be made under paragraph  
24 (2)(A) of this subsection unless the award of the contract

1 is otherwise likely to occur within 30 days after the mak-  
2 ing of such finding.

3 “(4) The suspension of the award under paragraph  
4 (1) shall not preclude the executive agency concerned from  
5 continuing the procurement process up to but not includ-  
6 ing the award of the contract.

7 “(e) SUSPENSION OF CONTRACT PERFORMANCE.—  
8 (1) A contractor awarded an executive agency contract  
9 may, during the period described in paragraph (4), begin  
10 performance of the contract and engage in any related ac-  
11 tivities that result in obligations being incurred by the  
12 United States under the contract unless the contracting  
13 officer responsible for the award of the contract withholds  
14 authorization to proceed with performance of the contract.

15 “(2) The contracting officer may withhold an author-  
16 ization to proceed with performance of the contract during  
17 the period described in paragraph (4) if the contracting  
18 officer determines in writing that—

19 “(A) a protest is likely to be filed; and

20 “(B) the immediate performance of the contract  
21 is not in the best interests of the United States.

22 “(3)(A) If the executive agency awarding the contract  
23 receives notice of a protest in accordance with this section  
24 during the period described in paragraph (4)—

1           “(i) the contracting officer may not authorize  
2           performance of the contract to begin while the pro-  
3           test is pending; or

4           “(ii) if authorization for contract performance  
5           to proceed was not withheld in accordance with  
6           paragraph (2) before receipt of the notice, the con-  
7           tracting officer shall immediately direct the contrac-  
8           tor to cease performance under the contract and to  
9           suspend any related activities that may result in ad-  
10          ditional obligations being incurred by the United  
11          States under that contract.

12          “(B) Performance and related activities suspended  
13          pursuant to subparagraph (A)(ii) by reason of a protest  
14          may not be resumed while the protest is pending.

15          “(C) The head of the procuring activity may author-  
16          ize the performance of the contract (notwithstanding a  
17          protest of which the executive agency has notice under this  
18          section)—

19               “(i) upon a written finding that urgent and  
20               compelling circumstances that significantly affect in-  
21               terests of the United States will not permit waiting  
22               for the decision concerning the protest by the Board  
23               concerned; and

24               “(ii) after the Board concerned is notified of  
25               that finding.

1       “(4) The period referred to in paragraphs (2) and  
2 (3)(A), with respect to a contract, is the period beginning  
3 on the date of the contract award and ending on the later  
4 of—

5               “(A) the date that is 10 days after the date of  
6 the contract award; or

7               “(B) the date that is 5 days after the debriefing  
8 date offered to an unsuccessful offeror for any de-  
9 briefing that is requested and, when requested, is re-  
10 quired.

11       “(f) The authority of the head of the procuring activ-  
12 ity to make findings and to authorize the award and per-  
13 formance of contracts under subsections (d) and (e) of this  
14 section may not be delegated.

15       “(g) PROCEDURES.—

16               “(1) PROCEEDINGS AND DISCOVERY.—The  
17 Board concerned shall conduct proceedings and  
18 allow discovery to the minimum extent necessary for  
19 the expeditious, fair, and cost-effective resolution of  
20 the protest. The Board shall allow discovery only in  
21 a case in which the Board determines that the writ-  
22 ten submissions of the parties do not provide an ade-  
23 quate basis for a fair resolution of the protest. Such  
24 discovery shall be limited to material which is rel-  
25 evant to the grounds of protest or to such affirma-

1        tive defenses as the executive agency involved, or any  
2        intervenor supporting the agency, may raise.

3            “(2) PRIORITY.—The Board concerned shall  
4        give priority to protests filed under this section over  
5        contract disputes and alternative dispute services.  
6        Except as provided in paragraph (3), the Board con-  
7        cerned shall issue its final decision within 65 days  
8        after the date of the filing of the protest, unless the  
9        Chairman determines that the specific and unique  
10       circumstances of the protest require a longer period,  
11       in which case the Board concerned shall issue such  
12       decision within the longer period determined by the  
13       Chairman. An amendment that adds a new ground  
14       of protest should be resolved, to the maximum ex-  
15       tent practicable, within the time limits established  
16       for resolution of the initial protest.

17           “(3) THRESHOLD.—(A) Except as provided in  
18        subparagraph (B), any protest in which the antici-  
19        pated value of the contract award that will result  
20        from the protested procurement, as estimated by the  
21        executive agency involved, is less than \$30,000,000  
22        shall be considered under simplified rules of proce-  
23        dure. Such simplified rules shall provide that discov-  
24        ery in such protests shall be in writing only. Such  
25        written discovery shall be the minimum necessary

1 for the expeditious, fair, and cost-effective resolution  
2 of the protest and shall be allowed only if the Board  
3 determines that the written submissions of the par-  
4 ties do not provide an adequate basis for a fair reso-  
5 lution of the protest. Such protests shall be decided  
6 by a single Board judge. The Board concerned shall  
7 issue its final decision in each such protest within 45  
8 days after the date of the filing of the protest, un-  
9 less the Chairman determines that the specific and  
10 unique circumstances of the protest require a longer  
11 period, in which case the Board concerned shall  
12 issue such decision within the longer period deter-  
13 mined by the Chairman.

14 “(B) If the Chairman of the Board concerned  
15 determines that special and unique circumstances of  
16 a protest that would otherwise qualify for the sim-  
17 plified rules described in subparagraph (A), includ-  
18 ing the complexity of a protest, requires the use of  
19 full procedures as described in paragraphs (1) and  
20 (2), the Chairman shall use such procedures in lieu  
21 of the simplified rules described in subparagraph  
22 (A).

23 “(4) CALCULATION OF TIME FOR ADR.—In cal-  
24 culating time for purposes of paragraph (2) or (3)  
25 of this subsection, any days during which proceed-

1 ings are suspended for the purpose of attempting to  
2 resolve the protest by alternative means of dispute  
3 resolution, up to a maximum of 20 days, shall not  
4 be counted.

5 “(5) DISMISSAL OF FRIVOLOUS PROTESTS.—

6 The Board concerned may dismiss a protest that the  
7 Board concerned determines—

8 “(A) is frivolous,

9 “(B) has been brought or pursued in bad  
10 faith; or

11 “(C) does not state on its face a valid basis  
12 for protest.

13 “(6) PAYMENT OF COSTS FOR FRIVOLOUS PRO-

14 TESTS.—(A) If the Board concerned expressly finds  
15 that a protest or a portion of a protest is frivolous  
16 or has been brought or pursued in bad faith, the  
17 Board concerned shall declare that the protester or  
18 other interested party who joins the protest is liable  
19 to the United States for payment of the costs de-  
20 scribed in subparagraph (B) unless—

21 “(i) special circumstances would make  
22 such payment unjust; or

23 “(ii) the protester obtains documents or  
24 other information after the protest is filed with  
25 the Board concerned that establishes that the



1 protest or a portion of the protest is frivolous  
2 or has been brought or pursued in bad faith,  
3 and the protester then promptly withdraws the  
4 protest or portion of the protest.

5 “(B) The costs referred to in subparagraph (A)  
6 are all of the costs incurred by the United States of  
7 reviewing the protest, or of reviewing that portion of  
8 the protest for which the finding is made, including  
9 the fees and other expenses (as defined in section  
10 2412(d)(2)(A) of title 28, United States Code) in-  
11 curred by the United States in defending the pro-  
12 test.

13 “(h) DECISIONS AND CORRECTIVE ACTIONS ON PRO-  
14 TESTS.—(1) In making a decision on protests filed under  
15 this section, the Board concerned shall accord due weight  
16 to the goals of economic and efficient procurement, and  
17 shall take due account of the rule of prejudicial error.

18 “(2) If the Board concerned determines that a deci-  
19 sion of the head of the executive agency is arbitrary or  
20 capricious or violates a statute or regulation, the Board  
21 concerned may order the agency (or its head) to take such  
22 corrective action as the Board concerned considers appro-  
23 priate. Corrective action includes requiring that the execu-  
24 tive agency—

1           “(A) refrain from exercising any of its options  
2           under the contract;

3           “(B) recompile the contract immediately;

4           “(C) issue a new solicitation;

5           “(D) terminate the contract;

6           “(E) award a contract consistent with the re-  
7           quirements of such statute and regulation;

8           “(F) implement any combination of require-  
9           ments under subparagraphs (A), (B), (C), (D), and  
10          (E); or

11          “(G) implement such other actions as the  
12          Board concerned determines necessary.

13          “(3) If the Board concerned orders corrective action  
14          after the contract award, the affected contract shall be  
15          presumed valid as to all goods or services delivered and  
16          accepted under the contract before the corrective action  
17          was ordered.

18          “(4) Any agreement that provides for the dismissal  
19          of a protest and involves a direct or indirect expenditure  
20          of appropriated funds shall be submitted to the Board con-  
21          cerned and shall be made a part of the public record (sub-  
22          ject to any protective order considered appropriate by the  
23          Board concerned) before dismissal of the protest.

24          “(i) AUTHORITY TO DECLARE ENTITLEMENT TO  
25          COSTS.—(1)(A) Whenever the Board concerned deter-

1 mines that a decision of the head of an executive agency  
2 is arbitrary or capricious or violates a statute or regula-  
3 tion, it may, in accordance with section 1304 of title 31,  
4 United States Code, further declare an appropriate pre-  
5 vailing party to be entitled to the costs of—

6 “(i) filing and pursuing the protest, including  
7 reasonable attorneys’ fees and consultant and expert  
8 witness fees, and

9 “(ii) bid and proposal preparation.

10 “(B) No party (other than a small business concern  
11 (within the meaning of section 3(a) of the Small Business  
12 Act)) may be declared entitled under this paragraph to  
13 costs for—

14 “(i) consultant and expert witness fees that ex-  
15 ceed the highest rate of compensation for expert wit-  
16 nesses paid by the Federal Government, or

17 “(ii) attorneys’ fees that exceed \$150 per hour  
18 unless the Board concerned, on a case by case basis,  
19 determines that an increase in the cost of living or  
20 a special factor, such as the limited availability of  
21 qualified attorneys for the proceedings involved, jus-  
22 tifies a higher fee.

23 “(2) Payment of amounts due from an agency under  
24 paragraph (1) or under the terms of a settlement agree-  
25 ment under subsection (h)(4) shall be made from the ap-

1 appropriation made by section 1304 of title 31, United  
2 States Code, for the payment of judgments. The executive  
3 agency concerned shall reimburse that appropriation ac-  
4 count out of funds available for the procurement.

5 “(j) APPEALS.—A final decision of the Board con-  
6 cerned may be appealed as set forth in section 8(g)(1) of  
7 the Contract Disputes Act of 1978 by the head of the exec-  
8 utive agency concerned and by any interested party, in-  
9 cluding interested parties who intervene in any protest  
10 filed under this section.

11 “(k) ADDITIONAL RELIEF.—Nothing contained in  
12 this section shall affect the power of the Board concerned  
13 to order any additional relief which it is authorized to pro-  
14 vide under any statute or regulation.

15 “(l) NONEXCLUSIVITY OF REMEDIES.—Nothing con-  
16 tained in this section shall affect the right of any inter-  
17 ested party to file a protest with the contracting agency  
18 or to file an action in the United States Court of Federal  
19 Claims or in a United States district court.”.

20 **SEC. 425. APPLICABILITY TO CERTAIN CONTRACTS.**

21 The Office of Federal Procurement Policy Act (41  
22 U.S.C. 401 et seq.), as amended by section 424, is further  
23 amended by adding at the end the following:

1 **“SEC. 215. APPLICABILITY TO CERTAIN CONTRACTS.**

2       “(a) CONTRACTS AT OR BELOW THE SIMPLIFIED AC-  
3 QUISSION THRESHOLD.—Notwithstanding section 33 of  
4 this Act, the authority conferred on the Defense Board  
5 and the Civilian Board by this title is applicable to con-  
6 tracts in amounts not greater than the simplified acquisi-  
7 tion threshold.

8       “(b) CONTRACTS FOR COMMERCIAL ITEMS.—Not-  
9 withstanding section 34 of this Act, the authority con-  
10 ferred on the Defense Board and the Civilian Board by  
11 this title is applicable to contracts for the procurement of  
12 commercial items.”.

13 **Subtitle D—Repeal of Other Stat-**  
14 **utes Authorizing Administrative**  
15 **Protests**

16 **SEC. 431. REPEALS.**

17       (a) GSBCA PROVISIONS.—Subsection (f) of the  
18 Brooks Automatic Data Processing Act (section 111 of the  
19 Federal Property and Administrative Services Act of  
20 1949; 40 U.S.C. 759) is repealed.

21       (b) GAO PROVISIONS.—(1) Subchapter V of chapter  
22 35 of title 31, United States Code (31 U.S.C. 3551–3556)  
23 is repealed.

24       (2) The analysis for chapter 35 of such title is  
25 amended by striking out the items relating to sections  
26 3551 through 3556 and the heading for subchapter V.

1 **Subtitle E—Transfers and Transi-**  
2 **tional, Savings, and Conforming**  
3 **Provisions**

4 **SEC. 441. TRANSFER AND ALLOCATION OF APPROPRIA-**  
5 **TIONS AND PERSONNEL.**

6 (a) TRANSFERS.—

7 (1) ARMED SERVICES AND CORPS BOARDS OF  
8 CONTRACT APPEALS.—The personnel employed in  
9 connection with, and the assets, liabilities, contracts,  
10 property, records, and unexpended balance of appro-  
11 priations, authorizations, allocations, and other  
12 funds employed, held, used, arising from, available  
13 to, or to be made available in connection with the  
14 functions vested by law in the Armed Services Board  
15 of Contract Appeals and the board of contract ap-  
16 peals of the Corps of Engineers established pursuant  
17 to section 8 of the Contract Disputes Act of 1978  
18 (41 U.S.C. 607) (as in effect on the day before the  
19 effective date described in section 451), shall be  
20 transferred to the Department of Defense Board of  
21 Contract Appeals for appropriate allocation by the  
22 Chairman of that Board.

23 (2) OTHER BOARDS OF CONTRACTS APPEALS.—  
24 The personnel employed in connection with, and the  
25 assets, liabilities, contracts, property, records, and

1 unexpended balance of appropriations, authoriza-  
2 tions, allocations, and other funds employed, held,  
3 used, arising from, available to, or to be made avail-  
4 able in connection with the functions vested by law  
5 in the boards of contract appeals established pursu-  
6 ant to section 8 of the Contract Disputes Act of  
7 1978 (41 U.S.C. 607) (as in effect on the day before  
8 the effective date described in section 451) other  
9 than the Armed Services Board of Contract Appeals,  
10 the board of contract appeals of the Corps of Engi-  
11 neers, and the Postal Service Board of Contract Ap-  
12 peals shall be transferred to the Civilian Board of  
13 Contract Appeals for appropriate allocation by the  
14 Chairman of that Board.

15 (3) COMPTROLLER GENERAL.—(A) One-quarter  
16 (as determined by the Comptroller General) of the  
17 personnel employed in connection with, and one-  
18 quarter (as determined by the Comptroller General)  
19 of the assets, liabilities, contracts, property, records,  
20 and unexpended balance of appropriations, author-  
21 izations, allocations, and other funds employed, held,  
22 used, arising from, available to, or to be made avail-  
23 able in connection with the functions vested by law  
24 in the Comptroller General pursuant to subchapter  
25 V of chapter 35 of title 31, United States Code (as

1 in effect on the day before the effective date de-  
2 scribed in section 451), shall be transferred to the  
3 Civilian Board of Contract Appeals for appropriate  
4 allocation by the Chairman of that Board.

5 (B) Three-quarters (as determined by the  
6 Comptroller General) of the personnel employed in  
7 connection with, and three-quarters (as determined  
8 by the Comptroller General) of the assets, liabilities,  
9 contracts, property, records, and unexpended bal-  
10 ance of appropriations, authorizations, allocations,  
11 and other funds employed, held, used, arising from,  
12 available to, or to be made available in connection  
13 with the functions vested by law in the Comptroller  
14 General pursuant to subchapter V of chapter 35 of  
15 title 31, United States Code (as in effect on the day  
16 before the effective date described in section 451),  
17 shall be transferred to the Department of Defense  
18 Board of Contract Appeals for appropriate allocation  
19 by the Chairman of that Board.

20 (b) EFFECT ON PERSONNEL.—Personnel transferred  
21 pursuant to this subtitle shall not be separated or reduced  
22 in compensation for one year after such transfer, except  
23 for cause.

24 (c) REGULATIONS.—(1) The Department of Defense  
25 Board of Contract Appeals and the Civilian Board of Con-



1 tract Appeals shall each prescribe regulations for the re-  
2 lease of competing employees in a reduction in force that  
3 gives due effect to—

4 (A) efficiency or performance ratings;

5 (B) military preference; and

6 (C) tenure of employment.

7 (2) In prescribing the regulations, the Board con-  
8 cerned shall provide for military preference in the same  
9 manner as set forth in subchapter I of chapter 35 of title  
10 5, United States Code.

11 **SEC. 442. TERMINATIONS AND SAVINGS PROVISIONS.**

12 (a) TERMINATION OF BOARDS OF CONTRACT AP-  
13 PEALS.—Effective on the effective date described in sec-  
14 tion 451, the boards of contract appeals established pursu-  
15 ant to section 8 of the Contract Disputes Act of 1978 (41  
16 U.S.C. 607) (as in effect on the day before such effective  
17 date) other than the Postal Service Board of Contract Ap-  
18 peals shall terminate.

19 (b) SAVINGS PROVISION FOR CONTRACT DISPUTE  
20 MATTERS PENDING BEFORE BOARDS.—(1) This title and  
21 the amendments made by this title shall not affect any  
22 proceedings (other than bid protests pending before the  
23 board of contract appeals of the General Services Adminis-  
24 tration) pending on the effective date described in section

1 451 before any board of contract appeals terminated by  
2 subsection (a).

3 (2) In the case of any such proceedings pending be-  
4 fore the Armed Services Board of Contract Appeals or the  
5 board of contract appeals of the Corps of Engineers, the  
6 proceedings shall be continued by the Department of De-  
7 fense Board of Contract Appeals, and orders which were  
8 issued in any such proceeding by the Armed Services  
9 Board of Contract Appeals or the board of contract ap-  
10 peals of the Corps of Engineers shall continue in effect  
11 until modified, terminated, superseded, or revoked by the  
12 Department of Defense Board of Contract Appeals, by a  
13 court of competent jurisdiction, or by operation of law.

14 (3) In the case of any such proceedings pending be-  
15 fore an agency board of contract appeals other than the  
16 Armed Services Board of Contract Appeals or the board  
17 of contract appeals of the Corps of Engineers, the proceed-  
18 ings shall be continued by the Civilian Board of Contract  
19 Appeals, and orders which were issued in any such pro-  
20 ceeding by the agency board shall continue in effect until  
21 modified, terminated, superseded, or revoked by the Civil-  
22 ian Board of Contract Appeals, by a court of competent  
23 jurisdiction, or by operation of law.

24 (c) BID PROTEST TRANSITION PROVISIONS.—(1) No  
25 protest may be submitted to the Comptroller General pur-

1 suant to section 3553(a) of title 31, United States Code,  
2 or to the board of contract appeals for the General Serv-  
3 ices Administration pursuant to the Brooks Automatic  
4 Data Processing Act (40 U.S.C. 759) on or after the effec-  
5 tive date described in section 451.

6 (2)(A) In the case of bid protest proceedings pending  
7 before the board of contract appeals of the General Serv-  
8 ices Administration on the effective date described in sec-  
9 tion 451—

10 (i) with respect to bid protests involving pro-  
11 curements of the Department of Defense, the De-  
12 partment of the Army, the Department of the Navy,  
13 and the Department of the Air Force, the proceed-  
14 ings shall be continued by the Defense Board of  
15 Contract Appeals; and

16 (ii) with respect to bid protests involving pro-  
17 curements of any other executive agency (as defined  
18 by section 4(1) of the Office of Federal Procurement  
19 Policy Act (41 U.S.C. 403(1)), the proceedings shall  
20 be continued by the Civilian Board of Contract Ap-  
21 peals.

22 (B) The provisions repealed by section 431(a) shall  
23 continue to apply to such proceedings until the Depart-  
24 ment of Defense Board of Contract Appeals or the Civilian

1 Board of Contract Appeals, as the case may be, deter-  
2 mines such proceedings have been completed.

3 (3)(A) In the case of bid protest proceedings pending  
4 before the Comptroller General on the effective date de-  
5 scribed in section 451—

6 (i) with respect to bid protests involving pro-  
7 curements of the Department of Defense, the De-  
8 partment of the Army, the Department of the Navy,  
9 and the Department of the Air Force, the proceed-  
10 ings shall be continued by the Defense Board of  
11 Contract Appeals;

12 (ii) with respect to bid protests involving pro-  
13 curements of any other executive agency (as defined  
14 by section 4(1) of the Office of Federal Procurement  
15 Policy Act (41 U.S.C. 403(1)), the proceedings shall  
16 be continued by the Civilian Board of Contract Ap-  
17 peals; and

18 (iii) with respect to bid protests involving pro-  
19 curements of an entity that is not an executive agen-  
20 cy, the proceedings shall be continued by the Comp-  
21 troller General.

22 (B) The provisions repealed by section 431(b) shall  
23 continue to apply to such bid protest proceedings until the  
24 Department of Defense Board of Contract Appeals, the  
25 Civilian Board of Contract Appeals, or the Comptroller

1 General, as the case may be, determines that such pro-  
2 ceedings have been completed.

3 **SEC. 443. CONTRACT DISPUTES AUTHORITY OF BOARDS.**

4 (a) Section 2 of the Contract Disputes Act of 1978  
5 (41 U.S.C. 601) is amended—

6 (1) in paragraph (2), by striking out “, the  
7 United States Postal Service, and the Postal Rate  
8 Commission”;

9 (2) by amending paragraph (6) to read as fol-  
10 lows:

11 “(6) the term ‘Defense Board’ means the De-  
12 partment of Defense Board of Contract Appeals es-  
13 tablished under section 8(a) of this Act;”;

14 (3) by redesignating paragraph (7) as para-  
15 graph (8); and

16 (4) by inserting after paragraph (6) the follow-  
17 ing new paragraph (7):

18 “(7) the term ‘Civilian Board’ means the Civil-  
19 ian Board of Contract Appeals established under  
20 section 8(b) of this Act; and”.

21 (b) Section 6(c)(6) of the Contract Disputes Act of  
22 1978 (41 U.S.C. 605(c)(6)) is amended—

23 (1) by striking out “court or an agency board  
24 of contract appeals” and inserting in lieu thereof  
25 “court, the Defense Board, or the Civilian Board”;

(c) Section 7 of the Contract Disputes Act of 1978 (41 U.S.C. 606) is amended by striking out “an agency board of contract appeals” and inserting in lieu thereof “the Defense Board or the Civilian Board”.

14 (1) by amending the heading to read as follows:

17 (2) by striking out subsection (c);

19 (A) by striking out the first sentence and  
20 inserting in lieu thereof the following:

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1 from a decision of a contracting officer of any executive  
2 agency (other than the Department of Defense, the De-  
3 partment of the Army, the Department of the Navy, the  
4 Department of the Air Force, the United States Postal  
5 Service, or the Postal Rate Commission) relative to a con-  
6 tract made by that agency.”; and

7 (B) in the second sentence, by striking out  
8 “the agency board” and inserting in lieu thereof  
9 “the Board concerned”;

10 (4) in subsection (e), by striking out “An agen-  
11 cy board shall provide” and inserting in lieu thereof  
12 “The Defense Board and the Civilian Board shall  
13 each provide,”;

14 (5) in subsection (f), by striking out “each  
15 agency board” and inserting in lieu thereof “the De-  
16 fense Board and the Civilian Board”;

17 (6) in subsection (g)—

18 (A) in the first sentence of paragraph (1),  
19 by striking out “an agency board of contract  
20 appeals” and inserting in lieu thereof “the De-  
21 fense Board or the Civilian Board, as the case  
22 may be,”;

23 (B) by striking out paragraph (2); and

24 (C) by redesignating paragraph (3) as  
25 paragraph (2); and

1           (7) by striking out subsection (h) and inserting  
2           in lieu thereof the following:

3           “(h) There is established an agency board of contract  
4           appeals to be known as the ‘Postal Service Board of Con-  
5           tract Appeals’. Such board shall have jurisdiction to decide  
6           any appeal from a decision of a contracting officer of the  
7           United States Postal Service or the Postal Rate Commis-  
8           sion relative to a contract made by either agency. Such  
9           board shall consist of judges appointed by the Postmaster  
10          General who shall meet the qualifications of and serve in  
11          the same manner as judges of the Civilian Board of Con-  
12          tract Appeals. This Act and title II of the Office of Fed-  
13          eral Procurement Policy Act shall apply to contract dis-  
14          putes before the Postal Service Board of Contract Appeals  
15          in the same manner as they apply to contract disputes  
16          before the Civilian Board.”; and

17          (8) by striking out subsection (i).

18          (e) Section 9 of the Contract Disputes Act of 1978  
19          (41 U.S.C. 608) is amended—

20               (1) in subsection (a), by striking out “each  
21               agency board” and inserting in lieu thereof “the De-  
22               fense Board and the Civilian Board”; and

23               (2) in subsection (b), by striking out “the agen-  
24               cy board” and inserting in lieu thereof “the Board  
25               concerned”.



1       (f) Section 10 of the Contract Disputes Act of 1978  
2 (41 U.S.C. 609) is amended—

3           (1) in subsection (a)—

4               (A) in the first sentence of paragraph  
5 (1)—

6                   (i) by striking out “Except as pro-  
7 vided in paragraph (2), and in” and insert-  
8 ing in lieu thereof “In”; and

9                   (ii) by striking out “an agency board”  
10 and inserting in lieu thereof “the Defense  
11 Board or the Civilian Board”;

12               (B) by striking out paragraph (2); and

13               (C) by redesignating paragraph (3) as  
14 paragraph (2), and in that paragraph by strik-  
15 ing out “or (2)”;

16           (2) in subsection (b)—

17               (A) by striking out “any agency board”  
18 and inserting in lieu thereof “the Defense  
19 Board or the Civilian Board”; and

20               (B) by striking out “the agency board”  
21 and inserting in lieu thereof “the Board con-  
22 cerned”;

23           (3) in subsection (c)—

1 (A) by striking out “an agency board” and  
2 inserting in lieu of each “the Defense Board or  
3 the Civilian Board”; and

4 (B) by striking out “the agency board”  
5 and inserting in lieu thereof “the Board con-  
6 cerned”; and

7 (4) in subsection (d)—

8 (A) by striking out “one or more agency  
9 boards” and inserting in lieu thereof “the De-  
10 fense Board or the Civilian Board (or both)”;  
11 and

12 (B) by striking out “or among the agency  
13 boards involved” and inserting in lieu thereof  
14 “one or both of the Boards”.

15 (g) Section 11 of the Contract Disputes Act of 1978  
16 (41 U.S.C. 610) is amended—

17 (1) in the first sentence, by striking out “an  
18 agency board of contract appeals” and inserting in  
19 lieu thereof “the Defense Board or the Civilian  
20 Board”; and

21 (2) in the second sentence, by striking out “the  
22 agency board through the Attorney General; or upon  
23 application by the board of contract appeals of the  
24 Tennessee Valley Authority” and inserting in lieu  
25 thereof “the Defense Board or the Civilian Board”.

1 (h) Section 13 of the Contract Disputes Act of 1978  
2 (41 U.S.C. 612) is amended—

3 (1) in subsection (b), by striking out “an agen-  
4 cy board of contract appeals” and inserting in lieu  
5 thereof “the Defense Board or the Civilian Board”;  
6 and

7 (2) in subsection (d)(2), by striking out “by the  
8 board of contract appeals for” and inserting in lieu  
9 thereof “by the Defense Board or the Civilian Board  
10 from”.

11 **SEC. 444. REFERENCES TO AGENCY BOARDS OF CONTRACT**  
12 **APPEALS.**

13 (a) **DEFENSE BOARD.**—Any reference to the Armed  
14 Services Board of Contract Appeals or the board of con-  
15 tract appeals of the Corps of Engineers in any provision  
16 of law or in any rule, regulation, or other paper of the  
17 United States shall be treated as referring to the Depart-  
18 ment of Defense Board of Contract Appeals.

19 (b) **CIVILIAN BOARD.**—Any reference to an agency  
20 board of contract appeals other than the Armed Services  
21 Board of Contract Appeals, the board of contract appeals  
22 of the Corps of Engineers, or the Postal Service Board  
23 of Contract Appeals in any provision of law or in any rule,  
24 regulation, or other paper of the United States shall be

1 treated as referring to the Civilian Board of Contract Ap-  
2 peals.

3 **SEC. 445. CONFORMING AMENDMENTS.**

4 (a) TITLE 5.—Section 5372a of title 5, United States  
5 Code, is amended—

6 (1) in subsection (a)(1), by striking out “an  
7 agency board of contract appeals appointed under  
8 section 8 of the Contract Disputes Act of 1978” and  
9 inserting in lieu thereof “the Department of Defense  
10 Board of Contract Appeals or the Civilian Board of  
11 Contract Appeals appointed under section 202 of the  
12 Office of Federal Procurement Policy Act or the  
13 Postal Service Board of Contract Appeals appointed  
14 under section 8(h) of the Contract Disputes Act of  
15 1978”; and

16 (2) in subsection (a)(2), by striking out “an  
17 agency board of contract appeals” and inserting in  
18 lieu thereof “the Department of Defense Board of  
19 Contract Appeals, the Civilian Board of Contract  
20 Appeals, or the Postal Service Board of Contract  
21 Appeals”.

22 (b) TITLE 10.—(1) Section 2305(e) of title 10, Unit-  
23 ed States Code, is amended—

24 (A) in paragraph (1), by striking out “sub-  
25 chapter V of chapter 35 of title 31” and inserting

1 in lieu thereof “title II of the Office of Federal Pro-  
2 curement Policy Act”; and

3 (B) by striking out paragraph (3).

4 (2) Section 2305(f) of such title is amended—

5 (A) in paragraph (1), by striking out “subpara-  
6 graphs (A) through (F) of subsection (b)(1) of sec-  
7 tion 3554 of title 31” and inserting in lieu thereof  
8 “section 214(h)(2) of the Office of Federal Procure-  
9 ment Policy Act”; and

10 (B) in paragraph (2), by striking out “para-  
11 graph (1) of section 3554(c) of title 31 within the  
12 limits referred to in paragraph (2)” and inserting in  
13 lieu thereof “subparagraph (A) of section 214(i)(1)  
14 of the Office of Federal Procurement Policy Act  
15 within the limits referred to in subparagraph (B)”.

16 (c) FEDERAL PROPERTY AND ADMINISTRATIVE  
17 SERVICES ACT OF 1949.—(1) Section 303B(j) (as redes-  
18 ignated by section 104(b)(2)) of the Federal Property and  
19 Administrative Services Act of 1949 (41 U.S.C. 253b(h))  
20 is amended—

21 (A) in paragraph (1), by striking out “sub-  
22 chapter V of chapter 35 of title 31, United States  
23 Code” and inserting in lieu thereof “title II of the  
24 Office of Federal Procurement Policy Act”; and

25 (B) by striking out paragraph (3).

1       (2) Section 303B(k) (as redesignated by section  
2 104(b)(2)) of such Act (41 U.S.C. 253b(i)) is amended—

3           (A) in paragraph (1), by striking out “in sub-  
4 paragraphs (A) through (F) of subsection (b)(1) of  
5 section 3554 of title 31, United States Code” and  
6 inserting in lieu thereof “section 214(h)(2) of the  
7 Office of Federal Procurement Policy Act”; and

8           (B) in paragraph (2), by striking out “para-  
9 graph (1) of section 3554(c) of such title within the  
10 limits referred to in paragraph (2)” and inserting in  
11 lieu thereof “subparagraph (A) of section 214(i)(1)  
12 of the Office of Federal Procurement Policy Act  
13 within the limits referred to in subparagraph (B)”.

14       (d) OFFICE OF FEDERAL PROCUREMENT POLICY  
15 ACT.—The table of contents for the Office of Federal Pro-  
16 curement Policy Act (contained in section 1(b)) is amend-  
17 ed—

18           (1) by inserting the following before the item  
19 relating to section 1:

“TITLE I—FEDERAL PROCUREMENT POLICY GENERALLY”; and

20           (2) by adding at the end the following:

“TITLE II—DISPUTE RESOLUTION

“SUBTITLE A—GENERAL PROVISIONS

“Sec. 201. Definitions.

“Sec. 202. Membership.

“Sec. 203. Chairman.

“Sec. 204. Rulemaking authority.

“Sec. 205. Authorization of appropriations.

“SUBTITLE B—FUNCTIONS OF THE DEFENSE AND CIVILIAN BOARDS OF  
CONTRACT APPEALS

“Sec. 211. Alternative dispute resolution services.

“Sec. 212. Alternative dispute resolution of disputes and protests submitted to  
Boards.

“Sec. 213. Contract disputes.

“Sec. 214. Protests.

“Sec. 215. Applicability to certain contracts.”.

1 **Subtitle F—Effective Date; Regula-**  
2 **tions and Appointment of Chair-**  
3 **men**

4 **SEC. 451. EFFECTIVE DATE.**

5 Title II of the Office of Federal Procurement Policy  
6 Act, as added by this title, and the amendments and re-  
7 peals made by this title shall take effect 1 year after the  
8 date of the enactment of this Act.

9 **SEC. 452. REGULATIONS.**

10 (a) REGULATIONS REGARDING PROTESTS AND  
11 CLAIMS.—Not later than 1 year after the date of the en-  
12 actment of this Act, the Chairman of the Armed Services  
13 Board of Contract Appeals and the Chairman of the Gen-  
14 eral Services Board of Contract Appeals, in consultation  
15 with the Comptroller General with respect to protests,  
16 shall jointly issue—

17 (1) such procedural rules and regulations as are  
18 necessary to the exercise of the functions of the De-  
19 partment of Defense Board of Contract Appeals and  
20 the Civilian Board of Contract Appeals under sec-

1 tions 213 and 214 of the Office of Federal Procure-  
2 ment Policy Act (as added by this title); and

3 (2) statements of policy of general applicability  
4 with respect to such functions.

5 (b) REGULATIONS REGARDING APPOINTMENT OF  
6 JUDGES.—Not later than 1 year after the date of the en-  
7 actment of this Act—

8 (1) the Chairman of the Armed Services Board  
9 of Contract Appeals shall issue rules governing the  
10 establishment and maintenance of a register of eligi-  
11 ble applicants and the selection of judges for the De-  
12 partment of Defense Board of Contract Appeals;  
13 and

14 (2) the Chairman of the General Services Board  
15 of Contract Appeals shall issue rules governing the  
16 establishment and maintenance of a register of eligi-  
17 ble applicants and the selection of judges for the Ci-  
18 vilian Board of Contract Appeals.

19 **SEC. 453. APPOINTMENT OF CHAIRMEN OF DEFENSE**  
20 **BOARD AND CIVILIAN BOARD.**

21 Notwithstanding section 451, not later than 1 year  
22 after the date of the enactment of this Act—

23 (1) the Secretary of Defense shall appoint the  
24 Chairman of the Department of Defense Board of  
25 Contract Appeals; and



1           (2) the Administrator of General Services shall  
2       appoint the Chairman of the Civilian Board of Con-  
3       tract Appeals.

4       **TITLE V—EFFECTIVE DATES**  
5       **AND IMPLEMENTATION**

6       **SEC. 501. EFFECTIVE DATE AND APPLICABILITY.**

7       (a) EFFECTIVE DATE.—Except as otherwise provided  
8       in this Act, this Act and the amendments made by this  
9       Act shall take effect on the date of the enactment of this  
10      Act.

11      (b) APPLICABILITY OF AMENDMENTS.—(1) An  
12      amendment made by this Act shall apply, in the manner  
13      prescribed in the final regulations promulgated pursuant  
14      to section 502 to implement such amendment, with respect  
15      to any solicitation that is issued, any unsolicited proposal  
16      that is received, and any contract entered into pursuant  
17      to such a solicitation or proposal, on or after the date de-  
18      scribed in paragraph (3).

19      (2) An amendment made by this Act shall also apply,  
20      to the extent and in the manner prescribed in the final  
21      regulations promulgated pursuant to section 502 to imple-  
22      ment such amendment, with respect to any matter related  
23      to—

24           (A) a contract that is in effect on the date de-  
25      scribed in paragraph (3);

1 (B) an offer under consideration on the date  
2 described in paragraph (3); or

3 (C) any other proceeding or action that is ongoing  
4 on the date described in paragraph (3).

5 (3) The date referred to in paragraphs (1) and (2)  
6 is the date specified in such final regulations. The date  
7 so specified shall be October 1, 1996, or any earlier date  
8 that is not within 30 days after the date on which such  
9 final regulations are published.

10 **SEC. 502. IMPLEMENTING REGULATIONS.**

11 (a) PROPOSED REVISIONS.—Proposed revisions to  
12 the Federal Acquisition Regulation and such other proposed  
13 regulations (or revisions to existing regulations) as  
14 may be necessary to implement this Act shall be published  
15 in the Federal Register not later than 210 days after the  
16 date of the enactment of this Act.

17 (b) PUBLIC COMMENT.—The proposed regulations  
18 described in subsection (a) shall be made available for  
19 public comment for a period of not less than 60 days.

20 (c) FINAL REGULATIONS.—Final regulations shall be  
21 published in the Federal Register not later than 330 days  
22 after the date of enactment of this Act.

23 (d) MODIFICATIONS.—Final regulations promulgated  
24 pursuant to this section to implement an amendment  
25 made by this Act may provide for modification of an exist-

1 ing contract without consideration upon the request of the  
2 contractor.

3 (e) SAVINGS PROVISIONS.—(1) Nothing in this Act  
4 shall be construed to affect the validity of any action taken  
5 or any contract entered into before the date specified in  
6 the regulations pursuant to section 501(b)(3) except to the  
7 extent and in the manner prescribed in such regulations.

8 (2) Except as specifically provided in this Act, noth-  
9 ing in this Act shall be construed to require the renegoti-  
10 ation or modification of contracts in existence on the date  
11 of the enactment of this Act.

12 (3) Except as otherwise provided in this Act, a law  
13 amended by this Act shall continue to be applied according  
14 to the provisions thereof as such law was in effect on the  
15 day before the date of the enactment of this Act until—

16 (A) the date specified in final regulations imple-  
17 menting the amendment of that law (as promulgated  
18 pursuant to this section); or

19 (B) if no such date is specified in regulations,  
20 October 1, 1996.

Passed the House of Representatives September 14,  
1995.

Attest:

ROBIN H. CARLE,

*Clerk.*

HR 1670 RFS—2

HR 1670 RFS—3

HR 1670 RFS—4

HR 1670 RFS—5

HR 1670 RFS—6

HR 1670 RFS—7

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